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MICHAEL RODAK, JI

IN THE

Supreme Court of the United States

OCTOBER TERM, 1974

No. 74-345

R. J. REYNOLDS TOBACCO COMPANY, *et al.*,
Petitioners,

v.

AMERICAN PRESIDENT LINES, LTD., *et al.*,
Respondents.

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Petitioners, R. J. Reynolds Tobacco Company, RJI Corporation and Sea-Land Service, Inc. respectfully pray that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the District of Columbia Circuit issued in this proceeding on June 28, 1974.

OPINIONS BELOW

The opinion and judgment of the Court of Appeals, not yet officially reported, appears as Appendix A to

this Petition and is unofficially reported at 8 S.R.R. 21, 077. The decision of the Federal Maritime Commission in *Agreements 9827 and 9827-1*, Dockets 69-56 and 70-51, also not yet officially reported, appears as Appendix B to this Petition, and is unofficially reported at 13 S.R.R. 587.

JURISDICTION

This Court's jurisdiction is invoked under 28 U.S.C. §1254(1). The judgment of the Court of Appeals was entered on June 28, 1974. This Petition is filed within 90 days of that judgment.

QUESTIONS PRESENTED

1. Does the Federal Maritime Commission have jurisdiction over an agreement which, as filed, modified and approved, is on-going in nature, requires the continuing existence of, and creates continuing obligations among, the parties thereto, and necessitates continuing supervision by the Commission, where the agreement also includes an acquisition of stock?

2. To what extent may the Federal Maritime Commission modify and approve agreements in the public interest where the agreements consist of both discrete and integral ongoing features?

STATUTE INVOLVED

The full text of section 15 of the Shipping Act, 1916, 46 USC §814, is set forth as Appendix E hereto. In part this statute provides:

> Every common carrier by water, or other person subject to this chapter, shall file immediately with the Commission a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this chapter, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term "agreement" in this section includes understandings, conferences, and other arrangements.
>
> The Commission shall by order, after notice and hearing, disapprove, cancel or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be contrary to the public interest, or to be

in violation of this chapter, and shall approve all other agreements, modifications or cancellations.

* * *

Every agreement, modification, or cancellation lawful under this section, or permitted under section 813a of this title, shall be excepted from the provisions of sections 1-11 and 15 of Title 15, and amendments and Acts supplementary thereto. . . .

STATEMENT OF THE CASE

Petitioner Sea-Land Service, Inc. (Sea-Land) and United States Lines, Inc. (USL) in October, 1969, entered into an agreement wherein USL chartered 16 containerships to Sea-Land for 20 years with an option to purchase at the end of the 20-year period. The agreement also provided for, among other things, manning and operation of the vessels by USL at Sea-Land's direction; cooperation on changes in construction and conversion of vessels not delivered at the time of charter; a 20-year lease of containers, cranes, chassis and related equipment; cooperative arrangements with respect to carrying cargo booked prior to the charter, receipt and payment of fuel and stores, certain terminal facilities, insurance and financings; and payment of variable charter hire for the term of the charter dependent on contingent events such as structural changes, repairs, insurance, husbanding, taxes, assessments, etc. The parents of Sea-Land–petitioner R. J. Reynolds Tobacco Company (Reynolds)–and of USL–Walter Kidde and Company (Kidde)–guaranteed the

obligations of their respective subsidiaries under the agreement.

The charter agreement, designated *Agreement 9827*, was filed with the Federal Maritime Commission (FMC) for approval under section 15 of the Shipping Act, 1916, as amended, 46 U.S.C. §814.[1] The then Hearing Examiner, after extensive hearings,[2] recommended approval of Agreement 9827 in July 1970.

Prior to final FMC action, the deteriorating financial condition of USL, the increasingly manifest desire of Kidde to divest [illegible] of USL, the lack of a qualified purchaser of USL, and the desire of petitioners to protect their interests in Agreement 9827, caused the parties to agree to amend Agreement 9827. The parties specifically agreed to retain their respective obligations under the charter agreement, but provided also for the acquisition of the stock of USL by petitioner Reynolds for $65 million. Petitioner RJI Corporation (RJI), a newly formed subsidiary of Reynolds would be merged into USL, leaving USL the surviving company as a separate subsidiary of Reynolds.[3] To effect Kidde's

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[1] Agreement 9827 is Appendix C hereto.

[2] The record included 59 hearing days, 9000 pages of transcript and 500 exhibits.

[3] Article 1.1 of the acquisition agreement provides as follows: "The corporate existence of U.S. Lines, with all its purposes, powers and objects, shall continue unaffected and unimpaired by the Merger, and as the Surviving Corporation it shall be governed by the laws of the State of Delaware and succeed to all rights, assets, liabilities and obligations of RJI in accordance with the Delaware General Corporation Law. The separate existence and corporate organization of RJI shall cease upon the Effective Date of the Merger and thereupon U.S. Lines and RJI shall be a single corporation, to wit, U.S. Lines." *See* Appendix D at pp. 2d-3d.

determination to divest itself of USL, the parties signed a Supplemental Agreement providing for the disposition of USL by public or private sale or sales of stock or assets, and assumption of liabilities in the event the charter and acquisition were not approved or approved on terms unacceptable to Reynolds. The amendment to the agreement continuing the charter and other on-going provisions of Agreement 9827, was also filed with the FMC for approval under section 15, and was designated Agreement 9827-1.[4]

Prior to commencement of hearings on the amendment, the Department of Justice filed a complaint in the United States District Court for the District of New Jersey. On motions by the FMC for intervention and stay of the Court action, the District Court determined that the FMC lacked jurisdiction over a merger

[4]The text of Agreement 9827-1 is Appendix D hereto. The FMC designates amendments to agreements by suffixes such as "-1, -2, -3", etc.

In August 1970, USL reactivated its intercoastal service within the jurisdiction of the Interstate Commerce Commission (ICC). Because Sea-Land also performed transportation subject to the ICC, the agreement and amendment were subject to section 5(2) of the Interstate Commerce Act providing that "(a) It shall be lawful, with the approval and authorization of the Commission, as provided in subdivision (b) of this paragraph . . . for a person which is not a carrier and which has control of one or more carriers to acquire control of another carrier through ownership of its stock or otherwise. . . ." The agreements were filed with the ICC on November 9, 1970 and approved by Commission Order dated March 7, 1974. Upon petition by American President Lines, the ICC, by order of September 6, 1974, reopened the proceeding to consider, among other things, the decision of the Court of Appeals from which Petitioners seek certiorari.

agreement and refused to stay the Court action.[5] However, the Court did not stay proceedings of the FMC.

After further FMC hearings,[6] another Hearing Examiner recommended disapproval of Agreement 9827-1. The FMC, upon review of both decisions and pursuant to its power under section 15,[7] modified and conditioned[8] the agreement as amended to (1) eliminate the charter provisions, (2) permit the conditional acquisition of USL by Reynolds, and (3) provide for specific continuing safeguards and reports to assure the separate competitive operation of USL. After public comment on the modifications and conditions, the FMC issued its final order approving Agreement 9827 as amended by Agreement 9827-1 as modified and conditioned by the FMC.[9]

On appeal, the United States Court of Appeals for the District of Columbia Circuit, finding the issue of

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[5] *United States v. R.J. Reynolds Tobacco Company*, 325 F.Supp. 656 (D.N.J. 1971), *motion for leave to petition for cert. denied*, 410 U.S. 964 (1973).

[6] These hearings, Docket 70-51, encompassed 26 hearing days, 3676 pages of transcript, and nearly 200 exhibits.

[7] "The Commission shall by order, after notice and hearing, disapprove, cancel or *modify* any agreement . . ." Emphasis added.

[8] These modifications and conditions are listed in the FMC's decision, and are set forth in Appendix B, pp. 163b-166b.

[9] Appendix B.

FMC jurisdiction dispositive, vacated the FMC decision and directed the FMC to remove the agreement from its docket. Looking entirely to the amendment on the dispositive issue, the Court of Appeals concluded that the acquisition agreement in this case is not the type of agreement encompassed by section 15 and that the FMC therefore lacked jurisdiction to approve the transaction.[10] In short, the Court determined "Our task is at an end once we conclude that Congress has not conferred merger jurisdiction on the Commission and that the transaction at issue is in substance a merger "[11] The Court declined to consider the nature of the Agreement filed with the FMC in measuring jurisdiction.

REASONS FOR GRANTING THE WRIT

1. The decision of the Court of Appeals conflicts with decisions of this Court holding that on-going agreements affecting competition are within the jurisdiction of the Federal Maritime Commission under section 15 of the Shipping Act, 1916.

This Court recently determined in *Federal Maritime Commission v. Seatrain Lines,*[12] that the FMC did not have jurisdiction over "merger or acquisition of assets agreements which impose no on-going responsibilities," but *does* have jurisdiction over "those agreements, or

[10] Appendix A, pp. 4a-5a, 8a.

[11] Appendix A, p. 21a.

[12] 411 U.S. 726, 729 (1973).

those portions of agreements, which created on-going rights and responsibilities and which, therefore, necessitated continuous Commission supervision." The Court there said that "discrete merger or acquisition of assets agreements,"[13] "discrete merger arrangements,"[14] "a one-time merger or acquisition-of-assets agreement which imposes no continuing obligation and which, indeed, effectively destroys one of the parties to the agreement"[15] are not subject to FMC jurisdiction under section 15 of the Shipping Act, 1916.

Carefully distinguished[16] from these one-time, discrete events, are agreements which 'create on-going rights and responsibilities,' and 'necessitated continuous Commission supervision.' The latter agreements are of the class of agreements found by this Court subject to FMC jurisdiction in *Volkswagenwerk Aktiengesellschaft*

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[13]id. at 731.

[14]id. at 733.

[15]id. at 732.

[16]This distinction first appeared in the decision of the Court of Appeals in *Seatrain*, limiting that decision to the facts before it, finding lack of FMC "jurisdiction . . . to approve arrangements of the type involved here, which do not require the continued existence or participation of the parties in such arrangements." 460 F.2d 932, 949 (D.C. Cir. 1972). Petitioner, as *amicus* before this Court in *Seatrain*, urged this distinction between ongoing conditional acquisition agreements subject to FMC jurisdiction compared with one-time discrete mergers not subject to FMC jurisdiction. *See* Brief for *Amicus Curiae* R. J. Reynolds Tobacco Company and Motion for Leave to file at 11-16. The United States advocated abolition of the distinction, believing the distinction of the Court of Appeals "an unsound precedent that . . . should not be allowed to stand." Brief for United States, at 36-39.

v. Federal Maritime Commission.[17] The Court of Appeals failed to recognize this distinction in *Seatrain* and apply it to the on-going agreement before the Court in this case. In effect, the Court held that under no circumstances could the FMC have jurisdiction over an acquisition or merger agreement, even where the entire agreement, as filed, modified and approved, is on-going in nature, provides for continuing obligations between continually-existing parties, and requires continuing FMC supervision.[18]

This conclusion is not mandated by the decision in *Seatrain*. If the distinctions so carefully crafted in *Seatrain* are to be given meaning, they most clearly should apply to the present agreement which embodies all of the characteristics found by this Court to distinguish agreements within FMC jurisdiction from those that are not. Where an acquisition agreement includes as an integral part thereof on-going provisions which substantially modify and constrain the continuing right of control transferred by the acquisition, must the FMC (and a reviewing court) close its eyes to the on-going modifying provisions in determining jurisdiction? We submit that under *Seatrain* it must not. The on-going provisions are critical determinants of jurisdiction. The decision below holds that the on-going features of an agreement, which this Court has held

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[17] 390 U.S. 261 (1968).

[18] "Regardless of what label may be attached to the remainder of the so-called agreement (or undertaking) and regardless of the Commission's possible jurisdiction over that remainder, the merger portion of the agreement is not within the Commission's jurisdiction under the present provisions of Section 15." Appendix A, p. 21a.

determine FMC jurisdiction, may be disregarded in deciding whether the FMC has jurisdiction.

The agreement filed in the instant case was a twenty-year charter of vessels and long-term lease of equipment, with other continuing on-going relations between Sea-Land and USL. The charter agreement by its terms affected competition between common carriers and provided for a long-term exclusive or cooperative working arrangement between the carriers within the terms of section 15.

The acquisition feature was an amendment to Agreement 9827, retaining the charter and lease. The FMC considered the entire agreement as a whole, modified the agreement and imposed a series of restrictive conditions. In so doing, the FMC acted pursuant to its statutory mandate under section 15[19] and in accordance with the decision of this Court in *Federal Maritime Commission v. Aktiebolaget Svenska Amerika Linien.*[20] *Svenska* required the FMC to look beyond the simple terms of an agreement and to take action required in the public interest after carefully weighing the anticompetitive effects against serious transportation needs, valid regulatory purposes and important public benefits. Complying with the *Svenska* process, the FMC modified the agreement by eliminating the charter aspects, which numerous intervenors, including the Department of Justice, had

[19]"The Commission shall by order, after notice and hearing, disapprove, cancel or modify any agreement . . . [upon certain findings] . . . and shall approve all other agreements, modifications, or cancellations."

[20]390 U.S. 238.

opposed as being seriously anticompetitive, and conditioned the agreement to achieve significant public benefits, fill transportation needs, and secure the full measure of regulatory supervision found warranted by the FMC. The Commission conscientiously exercised the high degree of regulatory supervision and expertise which this Court repeatedly has found to be the hallmark of the regulatory process.[21] The FMC gave meaning to the provisions of section 15 and the *Svenska* decision.

The constraints imposed by the FMC as conditions to approval are plainly not insubstantial.[22] These additional ongoing features shape and determine the nature of the agreement itself. Consummation of the agreement as filed, modified, conditioned, and approved, contemplates and requires continuing joint action between the parties and produces greater regulatory supervision than would be the case with no agreement at all. An acquisition agreement so limited by continuing controls and supervision as the one

[21] *See Svenska, supra;* McLean Trucking Company v. United States, 321 U.S. 67, 87. *See also* Latin America/Pacific Coast Steamship Conference v. Federal Maritime Commission, 465 F.2d 542 (D.C. Cir. 1972); and Marine Space Enclosures v. Federal Maritime Commission, 420 F.2d 577, 585 (D.C. Cir. 1969) where the Court said: "Antitrust questions in general, and in particular contracts involving such all-encompassing restraints, present issues of the kind that should be explored sua sponte in order to discharge an agency's 'active and independent duty to guard the public interest,' and if need be, the Commission should order a hearing to ascertain whether there exist 'alternative courses, other than those suggested by the applicant.' "

[22] See Appendix B, pp. 163b-166b.

before the Court is fundamentally different from the "discrete merger" found outside FMC jurisdiction in *Seatrain*, and warrants a fundamentally different decision. The lower court erred in failing to so find.

The decision of the lower court holds that where the FMC has before it, modifies, conditions, and approves an on-going acquisition agreement to lessen anti-competitive effects, retain on-going features, and provide public benefits through the continued regulatory supervision of competing carriers, the FMC, by its action, thereby loses jurisdiction over the agreement.[23] The result, we submit, is contrary to the principles enunciated by this Court in *Seatrain*, *Volkswagenwerk*, and *Svenska*. This Court often has granted certiorari to review such conflicts or misapplication of prior decisions.[24]

2. The decision raises substantial and recurring issues regarding the filing of agreements under section 15, the power of the FMC to modify and approve agreements filed, and the legal effects of FMC approval of agreements.

Section 15 requires carriers and persons subject to the Shipping Act to *file immediately* agreements within seven categories enumerated in the section under threat

[23]The Court of Appeals determined that jurisdiction must be tested by the agreement modified and approved, and not by the agreement filed. Appendix A, pp. 29a-30a.

[24]McCandless v. Furland, 296 U.S. 140; Schlude v. Commissioner, 372 U.S. 128; Wilkinson v. United States, 365 U.S. 399.

of substantial penalties.[25] In enacting section 15, Congress "meant to do no less than . . . subject to the scrutiny of a specialized government agency the myriad of restrictive agreements in the maritime industry." *Volkswagenwerk, supra,* 390 U.S. at 276. This "myriad of restrictive agreements" includes hosts of agreements, otherwise within section 15, which, like the agreement here, are ongoing in nature as a whole, but which contain discrete features. The decision below creates numerous areas of controversy regarding agreements to be filed: are only ongoing features of an agreement to be filed or must the entire agreement be filed; do parties to an agreement or the FMC have responsibility for determining whether ongoing features are integral or severable; do the parties to an agreement have responsibility for determining whether ongoing features are sufficient to make the "substance" of an agreement ongoing or discrete, or is this properly a function of the FMC; where an agreement, such as the agreement here, which is ongoing in nature, but which contains discrete aspects, is filed under section 15, is the lengthy and expensive administrative process to be rendered a nullity based on the contingent action of the FMC.

Second, the decision below conflicts with the statutory responsibility of the FMC to modify agreements in the public interest in accordance of the decision of this Court in *Svenska.* When an agreement within a section 15 category is filed, the statute mandates the FMC after notice and hearing to "disapprove, cancel or modify" any agreement if the

[25]Section 15 provides for fines of up to $1,000 per day for violations of the section. See Appendix E.

FMC makes certain findings set forth in the section, and to "approve all other agreements, modifications or cancellations." The statute contains no limitations on the power of the FMC to modify agreements. This Court, in *Svenska*, established guidelines for the FMC in determining whether to approve, cancel or modify anticompetitive agreements–guidelines followed by the FMC in the instant case. *Svenska* did not limit the nature or number of modifications which the FMC could make. The decision below, despite the explicit mandate of the statute, has limited, for the first time, the power of the FMC to modify agreements in the public interest and approve an agreement as modified. The modifications and conditions in the instant case were "germane to the subject matter, and fairly within the powers expressly delegated" to the FMC by section 15. Further, the modifications and conditions assure the full and continued scope of the FMC's section 15 powers. The order is therefore valid. *Chicago, M., St.P. and P.R.R. v. United States*, 33 F.2d 583 (N.D. Ill. 1929), aff'd, 282 U.S. 311. An arbitrary limitation on the FMC's power to modify and approve agreements in the public interest is especially unwarranted here where the agreement as modified, conditioned and approved is within the classes of on-going agreements found by this Court in *Volkswagenwerk* and, we submit, by the distinctions in *Seatrain*, as required to be filed under section 15 and subject to FMC jurisdiction.

Third, the decision raises recurring issues of the legal effects of FMC approval of agreements within section 15. Approved agreements are exempted from the antitrust laws. In light of the decision, approval of an agreement within section 15 may extend only to those

features of an agreement, which, after approval, are ongoing in nature. This would mean that parties to an approved agreement may nevertheless have an antitrust exposure because features of an approved agreement, which may be discrete, could be still subject to antitrust laws, and to other tribunals. This result would be inconsistent with section 15, which exempts approved agreements from the antitrust laws, and with this Court's decision in *Svenska*, which required the FMC to weigh antitrust considerations with transportation needs, public benefits, and regulatory purposes in determining whether to approve, disapprove or modify section 15 agreements. The *Svenska* weighing process has little merit if the same agreement is to be reweighed by other standards in other tribunals.[26]

* * *

The substantial recurring issues raised by the decision below apply to hosts of agreements found subject to FMC jurisdiction, which arguably included discrete aspects, and also contained integral provisions on-going in nature: purchase of ships with covenant not to compete[27] (*Agreements 8745 and 8745-1, Purchase of Vessels "Alicia" and "Dorothy,"* 7 F.M.C. 199 (1962); formation of joint venture (*Agreements 788, 796, 798, Associated - Banning Co. v. Matson Navigation Company*, 5 F.M.B. 336 (1957); purchase of "good will" with covenant not to compete (*New York and Porto Rico Steamship Co. - Waterman Steamship Corp.*

[26]*See* Port of Boston Marine Terminal Association v. Rederiaktiebolaget Transatlantic, 400 U.S. 62.

[27]The Court of Appeals in *Seatrain* said that these agreements must be filed and the FMC may have jurisdiction to pass on all issues, including antitrust issues. 460 F.2d at 945.

Agreement, 2 U.S.M.C. 453 (1940); exclusive terminal leases (*Agreement T-4; Terminal Lease Agreement at Long Beach, California*, 8 F.M.C. 521 (1965);[28] purchase of equipment and preferential lease (*Agreement T-1768*, 9 F.M.C. 202 (1966), aff'd sub nom., *City of Los Angeles v. Federal Maritime Commission*, 385 F.2d 678 (D.C. Cir. 1967). Besides these examples there are dozens of "myriad . . . restrictive arrangements" among foreign carriers–charters, consortia, joint service arrangements as single entity–containing discrete aspects, which the FMC has approved with the addition of substantial conditions.

CONCLUSION

This Court in *Seatrain* determined that the FMC did not have jurisdiction over discrete, one-time mergers. The Court painstakingly distinguished its decision from agreements, on-going in nature and requiring the continued existence of the parties and supervision of the FMC. This Petition presents the case for the other side of the *Seatrain* coin; the case for an agreement embodying the distinctions of *Seatrain*. We urge that a

[28]This Court in *Volkswagenwerk* cited this agreement as "coming within [the] literal terms" of section 15. 390 U.S. at 274.

writ of certiorari should issue to review the opinion and judgment of the United States Court of Appeals for the District of Columbia Circuit.

Respectfully submitted,

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APPENDIX

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APPENDIX

APPENDIX A

Notice: This opinion is subject to formal revision before publication in the Federal Reporter or U.S. App. D.C. Reports. Users are requested to notify the Clerk of any formal errors in order that corrections may be made before the bound volumes go to press.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 73-1252

AMERICAN MAIL LINE LTD. AND
AMERICAN PRESIDENT LINES, LTD., PETITIONERS

v.

FEDERAL MARITIME COMMISSION AND
UNITED STATES OF AMERICA, RESPONDENT

R. J. REYNOLDS TOBACCO CO., ET AL
UNITED STATES LINES & WALTER KIDDE & CO.
SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA,
ATLANTIC, GULF, LAKES & INLAND WATERS DISTRICT
NATIONAL MARITIME UNION OF AMERCIA, INTERVENORS

No. 73-1334

AMERICAN EXPORT LINES, INC., PETITIONER

v.

FEDERAL MARITIME COMMISSION AND
UNITED STATES OF AMERICA, RESPONDENTS

R. J. REYNOLDS TOBACCO CO.
RJI CORPORATION AND SEA-LAND SERVICE, INC.,
SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA
ATLANTIC, GULF, LAKES & INLAND WATERS DISTRICT
AND UNITED STATES LINES, INC., AND WALTER KIDDE &
COMPANY, INC., NATIONAL MARITIME UNION OF AMERICA,
INTERVENORS

No. 73-1395

WALTER KIDDE & COMPANY, INC., PETITIONER

v.

FEDERAL MARITIME COMMISSION AND
UNITED STATES OF AMERICA, RESPONDENT

R. J. REYNOLDS TOBACCO COMPANY
SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA,
ATLANTIC, GULF, LAKES & INLAND WATERS DISTRICT
NATIONAL MARITIME UNION OF AMERICA, INTERVENORS

No. 73-1400

UNITED STATES OF AMERICA, PETITIONER

v.

FEDERAL MARITIME COMMISSION, RESPONDENT

R. J. REYNOLDS TOBACCO COMPANY
RJI CORPORATION AND SEA-LAND SERVICE, INC.,
SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA,
ATLANTIC, GULF, LAKES & INLAND WATERS DISTRICT,
UNITED STATES LINES, INC.,
WALTER KIDDE & COMPANY, INC.,
NATIONAL MARITIME UNION OF AMERICA, INTERVENORS

No. 73-1401

INTERNATIONAL LONGSHOREMEN'S ASSOCIATION, AFL-CIO, ET AL, PETITIONERS

v.

UNITED STATES OF AMERICA AND FEDERAL MARITIME COMMISSION, RESPONDENTS

R. J. REYNOLDS TOBACCO COMPANY
RJI CORPORATION AND SEA-LAND SERVICE, INC.,
SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, ATLANTIC, GULF, LAKES & INLAND WATERS DISTRICT
UNITED STATES LINES, INC.,
WALTER KIDDE & COMPANY, INC.,
NATIONAL MARITIME UNION OF AMERICA, INTERVENORS

Petition for Review of Orders of the Federal Maritime Commission

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Decided June 28, 1974

Warner W. Gardner for petitioners in No. 73-1252.

James R. Withrow, Jr., and *Sanford M. Litvack* of the bar of the Court of Appeals of New York *pro hac vice* by special leave of court with whom *Andrew J. Kilcarr*, *Edward Schmeltzer* and *Robert A. Peary* were on the brief for petitioner in No. 73-1395 and intervenors Walter Kidde & Company, Inc., and United States Lines, Inc.

Irwin A. Seibel, Attorney, Department of Justice, with whom *George Edelstein* was on the brief, for petitioners in No. 73-1400 and respondent, United States of America.

Edward G. Gruis, Deputy General Counsel, Federal Maritime Commission, with whom *James L. Pimper*, General Counsel and *William H. Smith*, Attorney, Federal Maritime Commission, were on the brief, for respondent, Federal Maritime Commission.

Edward M. Shea, with whom *John Mason*, *William F. Ragan*, *Paul J. McElligott* and *Gary R. Edwards* were on the brief for intervenors R. J. Reynolds Tobacco Co., RJI Corporation and Sea-Land Service, Inc.

Richard W. Kurrus was on the brief for petitioner in No. 73-1334.

Louis Waldman and *Seymour M. Waldman* were on the brief for petitioners in No. 73-1401.

Ronald Rosenberg and *Bernard Schulman* entered appearances for intervenor Seafarers International Union of North America.

Abraham E. Freedman entered an appearance for intervenor National Maritime Union of America.

Before McGOWAN and MACKINNON, *Circuit Judges*, and CHRISTENSEN,* *United States Senior District Judge* for the District of Utah.

Opinion for the court filed by *Circuit Judge* MACKINNON.

MACKINNON, *Circuit Judge*: Petitioners challenge the authority of the Federal Maritime Commission (the Commission) to approve Agreement No. 9827-1 under which the world's two largest containership operators—Sea-Land Service, Inc. and United States Lines, Inc.—would become subsidiaries of the same corporate parent—R. J. Reynolds Tobacco Company. The Commission approved

* Sitting by designation pursuant to 28 U.S.C. § 294(d).

the acquisition agreement on condition that the subsidiaries remain independent companies in competition with each other, except as the Commission might otherwise authorize.[1]

The dispositive issue is whether the Commission has jurisdiction to approve such an agreement under section 15 of the Shipping Act of 1916, 39 Stat. 833, as amended, 46 U.S.C. § 814,[2] which requires all persons sub-

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[1] We have jurisdiction to review the Commission's order under 28 U.S.C. § 2342(3), and venue under 28 U.S.C. § 2343.

[2] The current statute provides:

> Every common carrier by water, or other person subject to this chapter, shall file immediately with the Commission a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this chapter, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term "agreement" in this section includes understandings, conferences, and other arrangements.
>
> The Commission shall by order, after notice and hearing, disapprove, cancel or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be contrary to the public interest, or to be

in violation of this chapter, and shall approve all other agreements, modifications or cancellations. No such agreement shall be approved, nor shall continued approval be permitted for any agreement (1) between carriers not members of the same conference or conferences of carriers serving different trades that would otherwise be naturally competitive, unless in the case of agreements between carriers, each carrier, or in the case of agreements between conferences, each conference, retains the right of independent action, or (2) in respect to any conference agreement, which fails to provide reasonable and equal terms and conditions for admission and readmission to conference membership of other qualified carriers in the trade, or fails to provide that any member may withdraw from membership upon reasonable notice without penalty for such withdrawal.

The Commission shall disapprove any such agreement, after notice and hearing, on a finding of inadequate policing of the obligations under it, or of failure or refusal to adopt and maintain reasonable procedures for promptly and fairly hearing and considering shippers' requests and complaints.

Any agreement and any modification or cancellation of any agreement not approved, or disapproved, by the Commission shall be unlawful, and agreements, modifications, and cancellations shall be lawful only when and as long as approved by the Commission; before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation; except that tariff rates, fares, and charges, and classifications, rules, and regulations explanatory thereof (including changes in special rates and charges covered by section 813a of this title which do not involve a change in the spread between such rates and charges and the rates and charges applicable to noncontract shippers) agreed upon by approved conferences, and changes and amendments thereto, if otherwise in accordance with law, shall be permitted to take effect without prior approval upon compliance with the publication and filing requirements of section 817(d) of this title and with the provisions of any regulations the Commission may adopt.

[Continued]

ject to the Act to file with the Commission every agreement within specified categories reached with any other person subject to the Act. The statute empowers the Commission to disapprove, cancel or modify any agreement which it finds to be unjustly discriminatory, detrimental to the commerce of the United States, contrary to the public interest, or violative of the terms of the Act, and directs the Commission to approve all other agreements.

[Continued]

Every agreement, modification, or cancellation lawful under this section, or permitted under section 813a of this title, shall be excepted from the provisions of sections 1-11 and 15 of Title 15, and amendments and Acts supplementary thereto.

Whoever violates any provision of this section or of section 813a of this title shall be subject to a civil penalty of not more than $1,000 for each day such violation continues: *Provided, however*, That the penalty provisions of this section shall not apply to leases, licenses, assignments, or other agreements of similar character for the use of terminal property or facilities which were entered into before the date of enactment of this Act, and, if continued in effect beyond said date, submitted to the Federal Maritime Commission for approval prior to or within ninety days after the enactment of this Act, unless such leases, licenses, assignments, or other agreements for the use of terminal facilities are disapproved, modified, or canceled by the Commission and are continued in operation without regard to the Commission's action thereon. The Commission shall promptly approve, disapprove, cancel, or modify each such agreement in accordance with the provisions of this section.

46 U.S.C. § 811 (Supp. II, 1972).

[2] The Shipping Act originally conferred jurisdiction on the United States Shipping Board. *See* 39 Stat. 728, 729, 733. By amendment in 1961, jurisdiction over the function exercised here was transferred to the FMC. *See* 75 Stat. 840, *Sec.* 103(a).

Of primary importance in the present case is the express provision in section 15 that agreements approved by the Commission are exempt from the antitrust laws. If the agreement in this case is within the Commission's jurisdiction, then the acquisition is effectively shielded from antitrust attack. See *FMC v. Seatrain Lines, Inc.*, 411 U.S. 726, 728-29 & n.3 (1973); *Transamerican Trailer Transport, Inc.* v. *FMC*, —— U.S.App.D.C. ——, ——, 492 F.2d 617, 624 (1974). We conclude that the acquisition agreement in this case is not the type of agreement encompassed by section 15 and that the Commission therefore lacked jurisdiction to approve the transaction.

I

United States Lines, Inc. (USL) and Sea-Land Service, Inc. (Sea-Land) are the two largest containership operators in the world.[1] USL, the second largest containership operator, is wholly owned by Walter Kidde & Company, Inc. (Kidde), a conglomerate. USL owns 16 modern containerships and 14 modern breakbulk ships, maintains the largest containership operation between Atlantic ports and Western Europe, and also provides

[1] There are two methods of shipping cargo by water. When conventional breakbulk vessels are used, the articles in the cargo are packed separately, shipped by truck and/or rail to the port, unloaded from the truck or rail car, and finally loaded onto the ship and stored separately in the hold. Upon arrival at the port of destination, the process is repeated in reverse.

Carriage by containership, on the other hand, permits door-to-door delivery of large quantities of separate articles packed in large sealed containers. These containers, which are generally of heavy construction in 20, 30 or 40 foot lengths, are usually packed at the shipping point of origin, then loaded onto trucks or rail cars which transport them to containerships which carry them to the port of destination. On arrival the containers are unloaded and the contents are transported, still in their original containers, to the designated destination.

through-service between Europe, the Atlantic coast, the Pacific coast, Hawaii and the Far East. Despite this extensive operation, there is some evidence that the company has experienced liquidity problems in recent years.

Sea-Land, the largest containership operator in the world, is wholly owned by McClean Industries, Inc., which is wholly owned by R. J. Reynolds Tobacco Company (Reynolds), which in turn is a subsidiary of R. J. Reynolds, Inc., a conglomerate. At the time of the Commission hearing Sea-Land either owned or chartered 61 containerships and had 10 modern containerships under construction. Sea-Land services the Atlantic coast, Northern Europe, the Mediterranean, the Pacific coast, the Far East, Alaska and the Caribbean. USL is its only direct competitor in total United States foreign commerce. However, many of Sea-Land's ships are converted World War II vessels and Sea-Land needs more modern containerships.

In 1969 Sea-Land and USL agreed to a 20-year charter of USL's entire containership fleet to Sea-Land, with an option to purchase at the end of the charter period. Related equipment would be similarly leased and certain terminal facilities would be transferred from USL to Sea-Land. The parent corporations guaranteed the obligations of their subsidiaries.

In November 1970 the transaction was restructured into a merger-charter agreement. This agreement provided that RJI Corporation, a corporation wholly owned by Reynolds, would merge with USL and that RJI would cease its corporate existence, leaving USL as a wholly owned subsidiary of Reynolds. In return for delivering all outstanding stock of USL to Reynolds, Kidde would receive a promissory note for $65 million. A Supplemental Agreement provided that if the transaction were disapproved by a federal agency, Reynolds would find a

substitute purchaser. After the merger, USL would lease its containerships to Sea-Land as in the 1969 agreement.

In December 1970 the Department of Justice filed an action in the United States District Court for the District of New Jersey seeking to enjoin this transaction on the ground that it violated the antitrust laws. *United States v. R. J. Reynolds Tobacco Co.*, 325 F. Supp. 656 (D.N.J. 1971). The FMC intervened, seeking a stay or dismissal of the court's action pending completion of the FMC's consideration of the transaction, but on April 7, 1971 the court declined to stay the action, concluding that the FMC lacked jurisdiction over the merger embodied in the November 1970 agreement.

In March 1972, during final oral argument before the Commission on the November 1970 agreement, the attorney for Reynolds proposed a modified plan which the Commission eventually approved. Under this plan USL would merge with RJI Corporation as in the November 1970 plan, but USL would continue to operate independently of Sea-Land in all respects. The Commission reopened the proceeding and received comments on this new proposal.

On February 12, 1973 the Commission approved Reynolds' acquisition of USL upon the condition that USL and Sea-Land operate as independent carriers in all respects in competition with each other, except as the Commission might otherwise approve. The Commission expressed concern over USL's financial condition, found that the public interest would be served by maintaining USL as a viable domestic shipper, and concluded that acquisition by Reynolds offered the best opportunity to restore USL's financial strength. With a nod toward the anticompetitive effects of the acquisition, the Commission imposed certain restrictions designed to insure that Reynolds would operate USL and Sea-Land as

separate carriers in competition with each other. These restrictions are set forth in the Appendix to this opinion and are further discussed in part III of this opinion.

Petitioners challenge the Commission's jurisdiction under section 15 to approve an acquisition of this type. They also contend that the Commission's procedure in approving the plan suggested at oral argument was insufficient and that neither the evidence nor the Commission's reasoning supports its decision. We find the jurisdiction issue dispositive.

II

The first decision to consider the Commission's section 15 jurisdiction over mergers or acquisitions was *Matson Navigation Co. v. FMC*, 405 F.2d 796 (9th Cir. 1968), which upheld the Commission's jurisdiction to approve a merger between American Mail Line, Ltd., American President Lines, Ltd. and Pacific Far East Lines, Inc. Under the terms of the merger American Mail Line would remain either a subsidiary of the new corporation or a separate division for steamship operations. The *Matson* decision asserted reliance primarily on the earlier Supreme Court decision in *Volkswagenwerk Aktiengesellschaft v. FMC*, 390 U.S. 261 (1968), in which the Supreme Court refused to adopt an "extremely narrow view of the statute [section 15] that uses expansive language." *Id.* at 273. Noting that *Volkswagenwerk* gave section 15 "the broadest of readings," the *Matson* court concluded that a broad interpretation of the statute would include merger agreements. The *Matson* decision not only was the first decision to uphold section 15 jurisdiction over mergers, it was also the last.

The first of several decisions to reject section 15 jurisdiction over mergers or acquisitions was *United States v. R. J. Reynolds Tobacco Co.*, 325 F. Supp. 656 (D. N.J. 1971), discussed in section I of this opinion. That

case involved the November 1970 merger-charter which preceded the agreement at issue here. After a thorough study of section 15 and its legislative history, Judge Garth concluded that mergers or acquisitions are conceptually different from the types of agreements which Congress intended section 15 to regulate and disapproved Commission jurisdiction over the proposed merger-charter.

In *Seatrain Lines, Inc. v. FMC*, 148 U.S.App.D.C. 424, 460 F.2d 932 (1972), *aff'd*, 411 U.S. 726 (1973), we held that the statute does not confer jurisdiction over transactions where one shipping company acquires all the assets of another. After carefully examining section 15 and its legislative history, we concluded, as did the court in *Reynolds*, that the statute was designed to regulate types of agreements which were fundamentally distinct from mergers and acquisitions. Both the *Reynolds* and *Seatrain* decisions found the *Matson* court's reliance on *Volkswagenwerk* misplaced. Unlike a merger or acquisition, the agreement in *Volkswagenwerk* was a cooperative working arrangement similar to the agreements discussed in section 15's legislative history,[1] and the *Volkswagenwerk* decision therefore did not suggest that section 15 jurisdiction includes mergers or acquisitions. See also *FMC v. Seatrain Lines, Inc.*, 411 U.S. 726, 731 (1973).

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[1] *Volkswagenwerk* did not involve a merger or acquisition. That decision involved an agreement among the Pacific coast shipping industry employers to finance a union trust fund and to allocate among themselves a common assessment for the fund. The shipping industry employers included common carriers by water, stevedoring contractors and marine terminal operators. The Supreme Court held that this agreement between the shipping industry employers was a "cooperative working arrangement" which "affected competition" and therefore was subject to § 15.

The Supreme Court granted certiorari in our *Seatrain* case to resolve the conflict between *Matson* and the *Reynolds* and *Seatrain* decisions. Affirming the interpretation of the *Reynolds* and *Seatrain* decisions, the Court stated:

> We conclude that in enacting § 15, Congress did not intend to invest the Commission with the power to shield from antitrust liability merger or acquisition of assets agreements which impose no ongoing responsibilities. Rather, Congress intended to invest the Commission with jurisdiction over only those agreements, or those portions of agreements, which created ongoing rights and responsibilities and which, therefore, necessitated continuous Commission supervision.

FMC v. Seatrain Lines, Inc., 411 U.S. 726, 729 (1973).

Most of the legislative history of the Shipping Act is contained in the Alexander Report which culminated a comprehensive investigation into the shipping industry by the House Committee on the Merchant Marine and Fisheries chaired by Congressman Alexander.[6] It is unnecessary at this point to review the legislative history in detail because a thorough analysis appears in *Reynolds* and the two *Seatrain* decisions. It suffices to say that while Congress recognized that shipping conferences had some anticompetitive effects, Congress feared that their abolition would further decrease competition by forcing outright acquisitions or mergers among the shipping companies.[7] Congress therefore decided to allow coopera-

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[6] HOUSE COMMITTEE ON THE MERCHANT MARINE AND FISHERIES, REPORT ON STEAMSHIP AGREEMENTS AND AFFILIATIONS IN THE AMERICAN FOREIGN AND DOMESTIC TRADE, H.R. Doc. No. 805, 63d Cong., 2d Sess. (1911) (hereinafter ALEXANDER REPORT); *see* FMC v. Seatrain Lines, Inc., 411 U.S. 726, 736 (1973); United States v. R.J. Reynolds Tobacco Co., 325 F. Supp. 656, 658 (D.N.J. 1971).

[7] *See* FMC v. Seatrain Lines, Inc., *supra*, 411 U.S. at 738-39 ("We simply cannot believe that Congress intended to require approval of the very arrangements [merger agree-

tive arrangements to continue but to subject such arrangements to government supervision and regulation.[5] Thus it was primarily to avoid the greater evil of outright mergers and acquisitions that Congress permitted cooperative working arrangements to exist at all.

The legislative history of section 15 evidences a sharp recognition of the differences between cooperative working arrangements which are subject to the Act and mergers and acquisitions which are not. As Judge Garth stated in the *Reynolds* decision:

> The catalog or "full classification of these agreements" (i.e., the "agreements" to which the Alexander Committee's attention was primarily directed and to which its recommendations were exclusively directed) does not include a single agreement of merger or other form of corporate reorganization. The "agreements" represented in the Report are all "on-going" in nature. Most of these "agreements" are cooperative working arrangements. These "agreements" describe practices or regular activities in which two or more shipping companies have agreed to participate over a considerable period of time. None of the "agreements" studied by the Alexander Committee bears the slightest resemblance to an agreement of merger, which is essentially a single, discrete event, which transforms the relationship of the merging parties at the instant of merger.

325 F. Supp. at 68-69 (footnotes omitted). Indeed the Alexander Report expressly distinguished acquisitions from the cooperative arrangements to which the Committee's recommendations were directed.

> The numerous methods of controlling competition between water carriers in the domestic trade referred to in the preceding pages, may be grouped under three headings viz. (1) control through the

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ments] which, as the legislative history clearly shows, it wanted to prevent."); ALEXANDER REPORT at 301, 416.

[5] *See* note 2 *supra*.

> *acquisition* of water lines or the *ownership* of accessories to the lines; (2) control through *agreements* or *understandings*; and (3) control through *special practices.*

Alexander Report at 409 (emphasis added). This distinction between cooperative working arrangements and acquisitions by merger or other cooperative reorganizations lies at the heart of the *Reynolds* and two *Seatrain* decisions.

The *Reynolds* and *Seatrain* decisions use the words "ongoing" and "continuing" as one basis for distinguishing agreements subject to section 15 from those that are not. For example, summarizing its discussion of section 15 jurisdiction, the Supreme Court characterized section 15 agreements as those which "created ongoing rights and responsibilities and which, therefore, necessitated continuous Commission supervision." 411 U.S. at 729. And the *Reynolds* decision noted that "[t]he 'agreements' represented in the [Alexander] Report are all 'on-going' in nature." 325 F. Supp. at 659. Mergers and acquisitions, on the other hand, were described as "one-time agreements creating no continuing obligations," 411 U.S. at 734, and as "essentially a single, discreet event," 325 F. Supp. at 659.

However, it does not follow from these decisions that a transaction necessarily is subject to section 15 merely because it embodies or is coupled with some ongoing or continuing aspects. The transactions in the *Reynolds* and *Seatrain* decisions were single discreet events—a merger and a sale of assets, respectively.[*] The terms "ongoing" and "continuing" were all that were necessary to distinguish the transactions in those cases from cooperative working arrangements subject to section 15.

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[*] Although the *Reynolds* court was aware of the 1969 charter agreement, the court focused on the merger which was the crux of the November 1970 agreement.

But the courts' language does not require that every agreement which includes some ongoing characteristic is subject to section 15. Whereas all agreements subject to section 15 must be ongoing and continuing in nature, not every ongoing and continuing agreement, or agreement with such consequences, is necessarily subject to the statute. Otherwise, an outright merger or sale of assets could be structured to include some ongoing aspect for the sole purpose of obtaining antitrust shelter under section 15.[10] For example, a merger or sale of assets agreement could provide that the transaction would occur in installments over a period of years. This arrangement would be ongoing and continuing, but it would not necessarily be a section 15 agreement.

When confronted with a transaction that is arguably subject to section 15, the court must determine whether the agreement is a cooperative working arrangement which Congress intended to regulate by section 15 or whether the agreement involves, in substance, an outright merger or acquisition beyond the scope of section 15. The agreements expressly enumerated in section 15 illustrate the types of continuing understandings which that section was intended to include. Section 15 specifies agreements—

> [1] fixing or regulating transportation rates or fares;
>
> [2] giving or receiving special rates, accommodations, or other special privileges or advantages;
>
> [3] controlling, regulating, preventing, or destroying competition;
>
> [4] pooling or apportioning earnings, losses, or traffic;
>
> [5] allotting ports or restricting or otherwise regulating the number and character of sailings between ports:

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[10] We in no way mean to suggest that the present transaction reflects this purpose.

[6] limiting or regulating in any way the volume or character of freight or passenger traffic to be carried;

[7] or in any manner providing for an exclusive, preferential, or co-operative working arrangement."[11]

The *Reynolds* and *Seatrain* decisions emphasize one important characteristic of section 15 agreements: the agreement must impose ongoing obligations which require continuous Commission supervision. But this is not the sole characteristic which distinguishes section 15 agreements from other transactions. Another important distinguishing feature of section 15 agreements is that they do not affect ownership of the parties to the agreement but "envision the continued existence of the parties." *Seatrain Lines, Inc. v. FMC*, *supra*, at 531, 460 F.2d at 939. In other words, section 15 does not apply to mergers, consolidations and acquisitions, either separately

[11] Further illustrations appear in the Alexander Report which discusses the following categories of transactions:

Rate agreements

- Fixed rate agreements
- Minimum rate agreements
- Differential rate agreements
- Control of rates by the dominant carrier

Apportioning traffic by alloting the ports of sailing
Restricting the number of sailings
Limiting each line's volume of freight
Pooling arrangements
Agreements between conferences, or groups of lines
Making deposits as a guaranty of good faith
Deferred rebate systems
The use of fighting ships, or collective competition
Contracts with shippers

- Joint conference contracts
- Contracts by individual members of the conference
- Contracts based on volume of shipments

Agreements with American railroads

or in conjunction with other agreements. While the parties to a cooperative working arrangement may surrender control over a particular matter for the duration of that agreement, their separate identity and original independence continues in all other respects. Instead of creating conglomerates, cooperative working arrangements leave the parties separate and free to compete in areas not regulated by the cooperative agreement.[12]

A merger or acquisition, on the other hand, "transforms the relationship of the merging parties," *United States v. R. J. Reynolds Tobacco Co., supra*, 325 F. Supp. at 659, and "effectively destroys one of the parties to the agreement." *FMC v. Seatrain Lines, Inc., supra*, 411 U.S. at 732. Throughout the Alexander Report, "control through agreements" is carefully distinguished from "control through *acquisition* of water lines or the

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[12] Note, *The Shipping Industry Seeks a Safe Haven: Merger Jurisdiction for the FMC?*, 5 LAW & POL. INT'L. BUS. 271, 279-80 (1973). D. MARX, INTERNATIONAL SHIPPING CARTELS 250-51 (1953), described the competitive situation in a shipping conference as follows:

> One of the salient characteristics of shipping conferences, and one which has been influential in keeping profits from remaining excessive, has been the fact that conferences are not absolute monopolies. It is important to remember that shipping conferences are not combines linked by shareholdings or any other form of common ownership. It will be recalled that the Imperial Shipping Committee described them as follows: "A shipping conference is a meeting in which competitors face one another with the object of achieving that minimum of co-operation which will suffice to prevent such chaotic competition as might render impracticable the liner system of working ships. Each member of a conference is seeking the minimum surrender of his competitive freedom which is compatible with this object; his attitude in debate is determined by the sources of strength which lie behind his diplomacy." [Footnote omitted.]

ownership of accessories to the lines." E.g., Alexander Report at 301, 409 (emphasis added). Indeed the Committee feared that elimination of cooperative working arrangements would "necessarily" lead to "rate wars" or to consolidation "through *common ownership*." *Id.* at 416 (emphasis added).[13] A natural result of such a change in corporate ownership would be a permanent alteration of the competitive structure of the industry.[14]

A third distinguishing characteristic of section 15 agreements is suggested by the statutory language. The statute requires "[e]very common carrier by water or other person subject to this chapter" to file with the Commission "every *agreement with another such carrier* or other person subject to this chapter." Thus section 15 agreements must be agreements between parties subject to the Act. A unilateral undertaking by a single party does not constitute a section 15 agreement.[15]

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[13] In addition to the combinations by agreement there are numerous instances of consolidations among steamship lines by actual amalgamation or through *stock control of subsidiaries*. . . . This movement toward actual *consolidation by ownership*, various witnesses have emphasized, would have taken place more rapidly and on a much larger scale if the making of steamship agreements and conferences had been impossible. In the absence of cooperation through written or oral agreements, according to these witnesses, only two alternatives present themselves, viz. consolidation by *actual ownership* or the elimination of the weaker lines through cut-throat competition.

ALEXANDER REPORT at 301.

[14] Note, *supra* note 12, at 280.

[15] It is unnecessary in this case to decide whether a fourth distinguishing characteristic of § 15 agreements is that they "affect competition." *See* Volkswagenwerk Aktiengesellschaft v. FMC, 390 U.S. 261, 273 (1968). The *Volkswagenwerk* decision appeared not to eliminate this requirement but only to give it an expansive interpretation.

III

Having identified some of the characteristics of section 15 agreements, we must determine whether the acquisition at issue is in substance a transaction which Congress intended the Commission to regulate under section 15. The transaction originated in 1969 as a 20-year Charter Agreement by Sea-Land of USL's containership fleet, with an option to purchase at the end of the charter period. This agreement was later amended to a merger-charter agreement in which Reynolds attempted to acquire USL under the terms of the November 1970 merger agreement so as to insure USL's viability throughout the charter period. While approval of this merger-charter agreement was pending before the Commission, Reynolds suggested that it would drop the charter portion of the agreement and operate USL and Sea-Land independently. It is clear from this suggestion that the parent, Reynolds, possessed and was prepared to exercise extensive power to control USL and Sea-Land if the Commission approved the agreement as so amended.

Finally, the Commission did approve Reynolds' acquisition of USL upon certain stated conditions which it designed to insure competition between an independent USL and Sea-Land. See Appendix. Primarily, the conditions require that USL and Sea-Land exist as separate corporate entities and continue to compete, except as otherwise authorized by the Commission. These conditions, argues the Commission, remove the transaction from the realm of ordinary mergers and transforms the acquisition into a cooperative working arrangement under section 15.

However, we find that the merger is a substantial and principal feature of the transaction. Regardless of what label may be attached to the remainder of the so-called agreement (or undertaking), and regardless of the Commission's possible jurisdiction over that re-

mainder, the merger portion of the agreement is not within the Commission's jurisdiction under the present provisions of section 15. Whether it is desirable for Congress to vest such jurisdiction in the Commission is not for us to determine.[16] Our task is at an end once we conclude that Congress has not conferred merger jurisdiction on the Commission and that the transaction at issue is in substance a merger.

It is significant here that after the acquisition a single corporation will own and control both USL and Sea-Land, whereas prior to the acquisition ownership of these companies was separate. Before the acquisition two independent intercorporate structures existed—USL under the ultimate control of Kidde and Sea-Land under the ultimate control of Reynolds. No ties existed between these two corporate families and they necessarily competed with each other. In fact, the Commission found that USL was Sea-Land's only direct competitor in total United States foreign commerce. Jt. App. at 94. After the acquisition only one intercorporate structure would remain. Sea-Land and USL would be subsidiary corporations under the ultimate control of a single company, Reynolds. As the Alexander Report indicates, "consolidations . . . through stock control of subsidiaries" was

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[16] The U.S. shipping industry . . . claims that if it is to survive it must be exempt from the antitrust standards normally applied in determining the anticompetitive effect of mergers. The industry would prefer a procedure in which the antitrust aspects of mergers are viewed in light of other and perhaps overriding considerations, such as the need to preserve the industry by improving its efficiency by all appropriate means, including mergers. In view of its sensitivity to industry problems and needs, the Federal Maritime Commission . . . is considered by the industry to be best suited to exercise jurisdiction over mergers.

Note, *supra* note 12, at 274-75 (footnotes omitted).

one of the evils which Congress sought to avoid by regulating cooperative agreements.[17]

The conditions proposed by the Commission would do little to counteract the effect of USL and Sea-Land belonging to the same corporate family. The Commission seems to suggest that Reynolds' agreement not to sell, dispose of or encumber USL's stock or assets without Commission approval means that Reynolds would not enjoy all the attributes of complete ownership of USL. See Appendix, Condition I. However, the proposed conditions themselves suggest that Reynolds would possess virtually unlimited ownership and control over USL. For example, under Condition II Reynolds assumes all of USL's present expenses, debts and financing, and agrees to provide future financing without taking a security interest in USL's existing assets or future revenues. See Appendix. Additionally, under Condition VII, it is Reynolds rather than USL that is responsible for registering new vessels in the United States when they are delivered to USL.[18] It is unlikely that Reynolds would undertake such responsibilities if it did not consider itself possessed of essentially complete ownership of USL.[19]

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[17] Note 13 *supra*.

[18] Under Conditions III.A. and VI, Reynolds and USL are not precluded from having common officers and directors.

[19] A statement by counsel for the Commission at oral argument highlighted the unity of the proposed Reynolds-USL-Sea-Land corporate family. After counsel pointed out that the proposed conditions required charter arrangements between USL and Sea-Land to receive Commission approval, counsel was asked whether § 15 did not already require such approval. Counsel replied:

> Well, sir, there's some question here, without this independent structure, whether or not Reynolds, since they

The Commission contends that the agreement is a cooperative working arrangement because the proposed conditions impose substantial ongoing responsibilities requiring continuous Commission supervision. We are unable to accept this view of the transaction. Condition III provides:

> USL is to be operated as an independent carrier in all respects in competition with Sea-Land. Upon the adoption by USL and/or Sea-Land of any alteration in their competitive relationship, the FMC on its own motion or on petition of a party or person having an interest, may institute a proceeding to determine whether such alteration is consistent with the terms and conditions herein.

Following this general statement the agreement lists six specific conditions (A through F) which purport to insure competition between USL and Sea-Land. See Appendix. The Commission emphasizes this "agreement to compete" as a prime illustration of the ongoing nature of the transaction, but it ignores the change of ownership which results in a single corporation controlling both carriers.

In our *Seatrain* decision we indicated that an acquisition of assets coupled with an agreement *not* to

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> already chartered into the Sea-Land organization, the charter would have become effectuated, it would all be over. *We only have one entity.*

Transcript at 46 (emphasis added). This statement should be contrasted with the same counsel's statement shortly thereafter:

> You have a merger of the stock interest, yes, that is correct, sir. That interest up on top, we do not deny that. But what we do say, sir, is you do not have a consolidation of two different shipping companies. They are still held as *independent corporate entities.*

Transcript at 47 (emphasis added). These statements illustrate the transparency of the Commission's argument.

compete might be within the Commission's section 15 jurisdiction.[20] Our dictum in that decision suggests only that when two existing carriers agree not to compete, they should file their agreement with the Commission. We did not decide that under such circumstances the Commission would have jurisdiction to approve or disapprove an accompanying merger or acquisition of assets. In fact, our *Seatrain* decision made very clear that we agreed with Judge Garth's *Reynolds* decision and disagreed with the Ninth Circuit's *Matson* decision, in holding that a simple sale of all ships and assets is not within the Commission's jurisdiction.[21]

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[20] We recognize that there is a certain apparent inconsistency (more apparent than real) in holding that the parties are not required to file with the Commission and the Commission is not required to approve or disapprove a simple contract for the sale of ships and all assets, and yet a similar contract coupled with an agreement not to compete, which may involve more complicated antitrust issues than the more simple sale contract, is required to be filed and the Commission may have jurisdiction to pass on all questions, including antitrust issues. The explanation lies in (1) the wording of Section 15, (2) its legislative history, (3) the fact that the degree of antitrust complexity is not what determines the Commission's jurisdiction, and (4) perhaps in a caveat.

148 U.S.App.D.C. at 437, 460 F.2d at 915. An agreement not to compete was not present in *Seatrain* and is not present here.

[21] *Id.* at 437-38 & n.42, 460 F.2d at 915-16 & n.42.

Our *Seatrain* dictum raises the possibility that the Commission might have jurisdiction over the ongoing portion of an agreement that includes a merger or acquisition. The Supreme Court in their *Seatrain* decision also suggested that the Commission has jurisdiction over "only those agreements, *or those portions of agreements*, which created ongoing rights and responsibilities." 411 U.S. at 729 (emphasis

Regardless of the Commission's jurisdiction over agreements *not to compete*, it does not follow that section 15 confers jurisdiction over the undertaking *to compete* in this case. An agreement *not* to compete is precisely the type of arrangement which Congress intended to regulate by section 15. It is an agreement among carriers, which are otherwise in competition, to work together to lessen competition.

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added). The Department of Justice suggests that the Commission could exercise jurisdiction over an ancillary agreement not to compete after the courts determine the validity of the underlying acquisition under the antitrust laws. Brief for the United States of America at 16 n.9. We do not reach this question in the present case. It is interesting to note, however, that in *Seatrain* the FMC argued to the Supreme Court that § 15 jurisdiction over mergers should not hang on such a slender thread as the existence of a covenant not to compete.

> The Court below also suggested that the Commission can be ousted from jurisdiction and the aims and objectives of the Shipping Act frustrated by the simple expedient of omitting "on-going" or "continuing" arrangements in drafting agreements of sale or merger in the shipping industry.
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> * * * *
>
> Thus, if instead of an outright purchase of Oceanic's vessels in the case at bar, PFEL had entered into a long term charter (10-15 years), or coupled the acquisition agreement with a covenant not to compete, the agreement, according to the court below, would have been subject to the Commission's Section 15 jurisdiction. Such an "on-going" arrangement would have little or no different effects under the shipping and antitrust statutes. Therefore, by altering the actual mechanics of an acquisition or merger, the form rather than the substance of the transaction would control the ultimate disposition of any administrative or judicial preceding [sic]. *Such a result is both unsound and undesirable.*

Brief for FMC at 44-45, FMC v. Seatrain Lines, Inc., 411 U.S. 726 (1973) (footnotes omitted; emphasis added).

The undertaking *to compete* in this case is fundamentally different because the Shipping Act and the antitrust laws already require competition between the carriers. The conditions proposed by the Commission to augment the instant merger would prohibit USL and Sea-Land from establishing a cooperative working arrangement "except as otherwise authorized by the FMC." We perceive no difference between these conditions and the general requirement of section 15 that all carriers submit cooperative working arrangements for Commission approval. Section 15 would apply to USL and Sea-Land as separate corporate entities, even if they were commonly owned. Thus the "agreement to compete," which the Commission characterizes as imposing ongoing responsibilities, in reality imposes no additional obligations on USL and Sea-Land that are not already imposed by section 15 and the antitrust laws.[22]

Condition III.A. prohibits USL and Sea-Land from sharing an interlocking directorate. Like the agreement to compete, this condition constitutes a voluntary agreement *not* to engage in cooperative, noncompetitive activity. Condition III.A.1. requires one director of each company to be a "public member" who will report to the FMC.[23] This condition amounts to a unilateral under-

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[22] This discussion assumes that the agreement is between the two carriers, USL and Sea-Land. If the conditions are construed as an agreement between Reynolds and the Commission or between Reynolds and USL, then there might not exist an agreement between two entities subject to § 15. In the present case we need not resolve whether Reynolds is subject to § 15 by virtue of its involvement with its shipping company subsidiaries.

[23] Condition III.A.1. provides that the public member "shall be appointed by the Chief Judge of the U.S. Court of Appeals for the District of Columbia or another independent source to be selected by the FMC." This procedure raises ethical questions which might interfere with this court's future jurisdiction.

taking by USL and Sea-Land individually and separately with the Commission, and is not a cooperative working arrangement which would confer section 15 jurisdiction over the entire agreement.

Condition I regulates the manner in which Reynolds will handle USL's stock and assets. Not once is Sea-Land mentioned in Condition I. If we were to assume *arguendo* that Reynolds, in this instance, could be considered an entity subject to the Act,[24] this condition might be construed as an agreement between Reynolds and USL. But in essence this condition is no more than a unilateral undertaking by Reynolds. No similarity exists between the restrictions on Reynolds' possible sale of USL stock and the cooperative working arrangements contemplated by section 15. Although these restrictions might be appropriate conditions ancillary to a section 15 agreement, they do not in and of themselves confer section 15 jurisdiction over the acquisition by merger.

The Commission nevertheless contends that Condition I brings the agreement within section 15 by imposing ongoing obligations which require continuing Commission supervision. For example, the Commission asserts, Condition I.C. expressly subjects the acquisition to "review by the Commission at least every 5 years," and under Condition I.D. Reynolds acknowledges the Commission's power to require divestiture of USL stock. However, since section 15 empowers the Commission to disallow or modify an agreement at any time even though the agreement is initially approved,[25] the conditions impose no additional obligations but simply restate the Commission's continuous jurisdiction that is already prescribed by the statute. Indeed the Commission itself recognized that Condition I adds no additional obliga-

[24] *See* note 22 *supra*.

[25] Note 2 *supra*.

tions to the statutory scheme. In discussing the proposed conditions, the Commission stated:

> What we are doing is modifying the proposed agreement and approving the acquisition of USL by Reynolds upon certain conditions to permit continued Federal Maritime Commission surveillance over the acquisition reserving to ourselves the *authority the Commission has over all agreements* approved by us under section 15 of the Shipping Act, 1916.
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> • • • •
>
> Although our general obligation to exercise continuing Commission surveillance is required by the Shipping Act under section 15, we nevertheless *restate that obligation* in Condition I.C. . . .

Jt. App. at 82, 175 (emphasis added). Nothing could be clearer than that the Commission was merely restating its statutory authority.

We recognize that the Commission intended Condition I as an attempt to avoid some of the problems inherent in unscrambling a merger once it has been consummated.[28] What Reynolds has done in this case is to volunteer to subject itself to the Commission's power under section 15. However, as a statutory entity, the Commission cannot acquire jurisdiction merely by agreement of the parties before it. *Weinberger v. Bentex Pharmaceuticals, Inc.*, 412 U.S. 645, 652 (1973) ("Parties . . . cannot confer jurisdiction; only Congress can do so."); cf., e.g., *California v. LaRue*, 409 U.S. 109, 112-13 n.3 (1972); *People's Bank v. Calhoun*, 102 U.S. 256, 260-61 (1880).

Under Condition II Reynolds undertakes to finance USL. Condition IV relates to the submission of reports to and inspection by the Commission. Under Condition V the Commission retains jurisdiction to modify the con-

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[28] *See* FMC v. Seatrain Lines, Inc., *supra*, 411 U.S. at 735; Seatrain Lines, Inc. v. FMC, *supra*, 148 U.S.App.D.C. at 127, 460 F.2d at 935.

ditions. Condition VI requires that the parties not obstruct the performance of the conditions. Condition VII requires the parties to operate vessels registered in the United States. We have no difficulty concluding that these conditions are not cooperative working arrangements with another carrier or other person subject to the Act, and therefore, that they do not confer jurisdiction under section 15.

One final argument by the Commission must be considered. The Commission contends that since it had jurisdiction over the 1969 charter agreement originally submitted by USL and Sea-Land[*] and since the Commission is authorized to modify an agreement submitted under section 15, it retains jurisdiction over the acquisition at issue. Notwithstanding the complete elimination of any charter provision in the present agreement and the addition of a corporate reorganization, the Commission apparently views this agreement as simply a modified version of the 1969 charter.

The difficulty with this argument is that it would allow the Commission to take jurisdiction over one agreement, transform the agreement into an outright merger and then approve the outright merger. This circuitous procedure would enable the Commission to escape the Supreme Court's holding in *Seatrain* that the Commission lacks jurisdiction over outright mergers.[**] In our view

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[*] It is unnecessary to express our opinion on whether the original charter was within § 15 jurisdiction. We note, however, that a charter of all assets for an extended period might be treated for jurisdictional purposes as an acquisition of assets, especially if the charter is coupled with an option to purchase. *Cf.* United States v. Columbia Pictures Corp., 189 F. Supp. 153, 181-83 (S.D.N.Y. 1960).

[**] Such a procedure could lead to sharp practices by parties desiring antitrust immunity based on FMC approval. We do not imply that any of the parties to the present agreement had this intent.

the Commission's jurisdiction must be measured by the agreement actually approved, not by an agreement which was proposed but discarded.

The decision of the Commission approving Agreement No. 9827-1,[29] as modified by the Commission's decision dated February 12, 1973, is accordingly vacated, and the Commission is directed to remove this agreement from its docket.

Judgment accordingly.

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[29] Since the Commission lacked jurisdiction to approve the acquisition of USL by Reynolds, the Commission likewise lacked jurisdiction over the Supplemental Agreement whereby Reynolds agreed to find a substitute purchaser if the transaction were disapproved by a federal agency. We express no opinion on whether the Commission would have had jurisdiction over the Supplemental Agreement if our decision with respect to the acquisition had been different.

APPENDIX

[Conditions imposed by the Commission on Reynolds' acquisition of USL.]

I. The Stock of USL transferred to RJI is to be held by RJI to insure the independence of USL.

A. There shall be no substitution for RJI as the owner of USL stock without FMC approval. Reynolds/RJI shall not sell, pledge or in any way encumber the USL stock.

B. The corporate ownership among Reynolds, RJI and USL shall be irrevocable except as may be ordered by the FMC.

C. This approval shall be subject to constant surveillance and to review by the Commission at least every 5 years with records and reports remaining confidential.

D. Reynolds/RJI acknowledge that the FMC can and may require them to divest themselves of USL stock upon order of the FMC for breach of any condition herein and agree to comply with any such order of divestiture.

E. Reynolds/RJI shall not sell or otherwise dispose of, or encumber by lien, mortgage, or otherwise, the assets of USL except upon approval of the FMC.

F. No scheme or device may be adopted by USL, RJI, or Reynolds which would result in the distribution or dissipation of the assets or revenues of USL, except that reasonable cash dividends on USL stock may be paid but in no event to exceed net operating profits of USL for the prior corporate fiscal year, based upon sound accounting principles and after adequate provision for debt servicing.

II. All expenses, debts and financing of USL operations existing at the time of the consummation of this transaction shall be assumed by Reynolds; and Reynolds in the spirit of presentation made in this proceeding will assist USL in future financing.

A. No loans or advances of funds by Reynolds to USL or RJI for the benefit of USL may be secured by the existing assets or future revenues of USL, or by USL voting stock or evidence of voting interest in USL, and USL shall notify the FMC of any inter-company loans and the terms thereof.

III. USL is to be operated as an independent carrier in all respects in competition with Sea-Land. Upon the adoption by USL and/or Sea-Land of any alteration in their competitive relationship, the FMC, on its own motion, or on petition of a party or person having an interest, may institute a proceeding to determine whether such alteration is consistent with the terms and conditions herein.

A. McLean Industries and Sea-Land shall not have any employees, officers or directors in common with RJI and/or USL, except with respect to "public members" of the Boards of Directors.

1. One director of USL and one director of Sea-Land shall be a "public member": persons experienced in maritime transportation and corporate finance, who shall be appointed by the Chief Judge of the U.S. Court of Appeals for the District of Columbia or another independent source to be selected by the FMC. These directors shall also be members of the Executive Committees of the Boards of Directors, and shall report to the FMC as to any and all competitive service decisions and as otherwise may be required by the FMC.

B. USL and Sea-Land shall establish and maintain separate bids and tariffs for the carriage of military or

other United States Government-controlled or generated cargo.

C. USL shall be a member in its own name in conferences, pools, and other agreements approved by the FMC or hereafter filed for approval except as otherwise authorized by the FMC.

D. USL and Sea-Land may not have common soliciting or general agents, attorneys or accountants, except to the extent authorized by the FMC.

E. USL and Sea-Land shall not share in any pool percentages except as authorized by the FMC.

F. USL and Sea-Land shall not enter into any ship sale, ship charter, space charter, equipment interchange, transhipment, or any similar type of arrangement, or any type of service rationalization arrangement with each other without FMC approval.

IV. USL, RJI, Reynolds, Sea-Land and McLean Industries shall submit to the FMC, in form as prescribed by the FMC, semiannual reports verified by the president and the treasurer or secretary of such corporations with respect to the adherence to all the conditions contained herein.

A. The FMC shall have access at all times to all records of USL, RJI, Reynolds, Sea-Land and McLean Industries with respect to the maintenance of these conditions, particularly, but not limited to Condition III.B.

V. Any party or any person having an interest in the subject matter may at any time petition the FMC for modification of any of these conditions, and jurisdiction shall be retained by the FMC to amend, modify, or cancel these conditions in part or in whole pursuant to such petition or on the Commission's own motion after notice and hearing when required.

VI. As used in these conditions, "Reynolds," unless otherwise identified, means R. J. Reynolds Industries, Inc. Sea-Land, Reynolds Tobacco, Reynolds Industries, McLean Industries, RJI and USL mean those companies so identified; provided, that common employees among these companies shall not be prevented except as provided in Condition III.A. No subsidiary, parent, successor, or other organizations or corporations similarly or otherwise affiliated with Sea-Land, Reynolds Tobacco, Reynolds Industries, McLean Industries, RJI and USL shall be used or shall take any action to obstruct, prevent or otherwise impair the requirements of these conditions.

VII. Reynolds undertakes to place all eight SL7s under United States documentation as rapidly as the vessels are delivered. With the exception of the eight SL7s, and with the exception of other vessels now owned by Reynolds or Sea-Land already built or converted outside the United States and now documented under the laws of the United States, United States Lines and Sea-Land shall operate only vessels built and or converted in the United States, documented under the laws of the United States, and manned by American crews, provided that existing operations of foreign-flag vessels may be continued but not beyond a period of two years from date. Further provided, subject to Federal Maritime Commission approval, Sea-Land and United States Lines shall not be precluded from using foreign-flag vessels for feedership or like operations under circumstances where, because of the economics of the situation or the laws of other countries, the use of such foreign-flag vessels is required.

APPENDIX B

Report of the Federal Maritime Commission

FEDERAL MARITIME COMMISSION

Docket No. 69-56

AGREEMENT NO. 9827 BETWEEN UNITED STATES LINES, INC. AND SEA-LAND SERVICE, INC. (AND WALTER KIDDE & CO., INC. AND R. J. REYNOLDS TOBACCO CO., GUARANTORS)

Docket No. 70-51

AGREEMENT OF MERGER NO. 9827-1 AMONG
R. J. REYNOLDS TOBACCO COMPANY, RJI CORPORATION,
SEA-LAND SERVICE, INC.;
AND WALTER KIDDE & COMPANY, INC.
UNITED STATES LINES, INC.

Agreement to merge United States Lines, Inc., and RJI Corporation is subject to the approval of the Commission under section 15 of the Shipping Act, 1916.

Agreement No. 9827-1, as modified herein, that RJI Corporation shall acquire United States Lines, Inc., and that United States Lines, Inc., shall continue as an independent carrier in all respects in competition in the ocean commerce of the United States is subject to the approval of the Commission under section 15 of the Shipping Act,

1916, and is so approved subject to the conditions set forth herein, said approval conditional upon the filing of evidence of acceptance by all signatories to said agreement.

Supplemental agreement attached to the merger agreement, but not filed for approval under section 15, found subject to section 15 and disapproved in view of our approval of Agreement No. 9827-1 as modified herein.

Promissory note of Reynolds to Kidde for the purchase of United States Lines, Inc., attached to the merger agreement, but not filed for approval under section 15, found subject to section 15 and approved.

John Mason, John W. McConnell, Jr., Edward M. Shea, William F. Ragan, and *Paul J. McElligott* for R. J. Reynolds Tobacco Company, RJI Corporation, and Sea-Land Service, Inc.

Edward Schmeltzer, Robert A. Peavy, James R. Withrow, Jr., Sanford M. Litvack, and *John J. McGrath, Jr.,* for Walter Kidde & Company, Inc., and United States Lines, Inc.

Warner W. Gardner and *Mark L. Evans* for American Mail Line Ltd. and American President Lines Ltd.

Richard W. Kurrus, Howard A. Levy, Milton Handler, David Klingsberg, Lawrence S. Feld and *Theodore J. Fischkin* for American Export Isbrandtsen Lines, Inc.

Marvin J. Coles, Paul M. Tschirhart, and *Neal Mayer* for Seatrain Lines, Inc.

Richard W. McLaren, Joseph J. Saunders, Herbert D. Miller, Jr., and *Donald Flexner* for United States Department of Justice.

Report of the Federal Maritime Commission

Abraham E. Freedman, Stanley B. Gruber, and *George J. Capiello, Jr.,* for National Maritime Union of America, AFL-CIO.

Louis Waldman and *Seymour M. Waldman* for International Longshoremen's Association, AFL-CIO, National Marine Engineers Beneficial Association, AFL-CIO, and International Organization of Masters, Mates and Pilots, AFL-CIO, *Howard Shulman* for Seafarers International Union of North America, *H. Clayton Cook, Jr.,* for Maritime Administration, Department of Commerce, *Marshal P. Safir* for himself, and *Arnold Weisberger* for himself, interveners.

Donald J. Brunner, Margot Mazeau, and *Joseph B. Slunt,* Hearing Counsel.

REPORT

BY THE COMMISSION: (George H. Hearn, *Vice Chairman,* James V. Day* and Clarence Morse, *Commissioners.* Helen Delich Bentley, *Chairman,* and Ashton C. Barrett, *Commissioner,* dissenting and concurring.)

We instituted these separate proceedings to determine whether, *inter alia,* three agreements and a promissory note

* Commissioner James V. Day holds that the Commission is without jurisdiction over the agreements and promissory note submitted to us, but since the majority of the Commission votes affirmatively on that issue, he joins Vice Chairman Hearn and Commissioner Morse in their findings of fact and ultimate conclusions.

involving United States Lines, Inc. (USL), Sea-Land Service, Inc. (Sea-Land), Walter Kidde and Company, Inc. (Kidde), R. J. Reynolds Tobacco Co. (Reynolds), and RJI Corporation were subject to our jurisdiction and, if so, whether they should be approved, disapproved or modified pursuant to the provisions of section 15 of the Shipping Act, 1916.[A1*]

In Docket No. 69-56, dealing with the Charter Agreement (Agreement No. 9827), Paul D. Page, Jr., then Chief

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* Since we have included in this decision the complete initial decision of the Chief Administrative Law Judge in Docket No. 70-51 and finding it necessary to distinguish the footnotes in each, we have prefixed our footnotes with the letter (A).

[A1] Section 15, as amended, provides as far as pertinent:

Sec. 15. That every common carrier by water, or other person subject to this Act, shall file immediately with the Commission a true copy, or, if oral, a true and complete memorandum of every agreement with another such carrier or other person subject to this Act, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term "agreement" in this section includes understandings, conferences, and other arrangements.

The Commission shall by order, after notice and hearing, disapprove, cancel or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the

Report of the Federal Maritime Commission

Examiner (since retired), concluded that we have jurisdiction[A2] over the agreement and that it should be approved pursuant to the provisions of section 15 of the Shipping Act. Before exceptions were filed, USL announced a new service between the east and west coasts of the United States and the Far East via Hawaii. The Commission reopened the proceeding for further hearing on the new service. In his Supplemental Initial Decision the Examiner adhered to the conclusions contained in his earlier decision. Prior to the issuance of the aforementioned Supplemental Initial Decision, Agreement No. 9827-1 (an agreement to merge USL and Sea-Land) was filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916. We suspended the time for filing exceptions in the charter case, instituted an investigation (Docket No. 70-51) into the approvability of the merger agreement and

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[A1] (Continued)

United States, or to be contrary to the public interest, or to be in violation of this Act, and shall approve all other agreements, modifications, or cancellations * * *.

Any agreement and any modification or cancellation of any agreement not approved, or disapproved, by the Commission shall be unlawful, and agreements, modifications, and cancellations shall be lawful only when and as long as approved by the Commission; before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation; * * *.

Every agreement, modification, or cancellation lawful under this section, or permitted under section 14b, shall be excepted from the provisions of the [antitrust laws] * * *.

[A2] The Charter Agreement basically provided for the time charter to Sea-Land of 16 containerships owned by U. S. Lines for a 20-year period, with an option for Sea-Land to purchase the vessels at the end of the charter period. Comprehensive treatment of the Agreement and the issues involved appear in the decisions of the Chief Examiner. (See 11 S.R.R. 759 (1970) and 11 S.R.R. 1122 (1970).)

denied requests by certain opponents to the charter agreement to discontinue Docket No. 69-56.[A4]

In his Initial Decision served on October 21, 1971, in Docket No. 70-51, Chief Administrative Law Judge C. W. Robinson (Presiding Examiner at the time of issuance of his decision) concluded that the merger agreement is subject to the jurisdiction of the Commission and that the agreement should not be approved.[A4] He also found that the supplemental agreement between Kidde and Reynolds and the promissory note to Kidde (described later) are not subject to Commission jurisdiction (he suggested that if we found such jurisdiction, the supplemental agreement should not be approved and that the amount of the promissory note is fair and reasonable). The positions of those opposing the approval of the agreements, by and large, have remained consistent in both proceedings.[A5]

The merger agreement was approved by the respective Boards of Directors and was filed with the Commission on November 9, 1970. It is in the form of an amendment to the Charter Agreement. Attached to the merger agreement as exhibits, but not part thereof, were a document entitled the supplemental agreement and an unsigned copy of Rey-

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[A3] In denying the request, we considered:

> * * * it advisable to keep proceedings open in the charter case to permit consideration of the charter (Docket No. 69-56) when the merger agreement proceeding (Docket No. 70-51) is ready for Commission decision. [12 S.R.R. 93, 94 (1971)].

[A4] He specifically found the merger agreement anticompetitive in character and not "required by serious transportation need, necessary to secure important public benefits or in furtherance of a valid regulatory purpose of the Shipping Act."

[A5] Hearing Counsel, however, urged approval of the Agreement considered in the Charter case and disapproval of the Agreement in the Merger case.

nolds' promissory note in the principal sum of $65 million drawn to the order of Kidde and dated November 9, 1970.

The Charter Agreement, which the merger agreement amends, provides for (a) the time charter to Sea-Land of the 16 Lancer and Leader containerships owned by USL for a 20-year period, with an option for Sea-Land to purchase the vessels at the end of the charter period; (b) the lease and sub-lease to Sea-Land of containers and related equipment used in connection with the chartered vessels; (c) the transfer to Sea-Land of certain USL facilities located in the Far East; and (d) the guarantee of USL and Sea-Land's obligations under the Agreement by their respective parents, Kidde and Reynolds.

In addition to certain amendatory changes to the Charter, the merger agreement provides that on the effective date of the merger (ten days after the last required approval) RJI will be merged into USL, and that U.S. Lines will be the surviving corporation. Kidde, upon delivery of the outstanding shares of USL to Reynolds, will receive a promissory note from Reynolds in the amount of $65 million.

The merger agreement is expressly conditioned upon the receipt of approvals from this Commission, the Interstate Commerce Commission, and such approval of the Maritime Administration as may be required. The agreement provides that the merger will be consummated ten days after receipt of the last required approval unless (a) the agreement has been terminated prior to that time by the mutual consent of the parties; (b) the required approvals shall have been granted upon terms or conditions unacceptable to Reynolds and Reynolds shall have elected not to consummate the transaction; or (c) the consummation of the

merger shall have been enjoined by a court of competent jurisdiction.

The merger agreement modifies the Charter in that it eliminates the guarantees by the parent stockholders of their subsidiaries' obligations under the time charter and provides that the effective date for the implementation of the Charter will be the effective date of the merger. The merger agreement also provides that if the merger is approved and the Charter is disapproved, then the Charter is automatically cancelled, unless such cancellation would adversely affect the approval of the merger. The merger agreement also provides that if the merger is disapproved, the time charter and related agreements shall be cancelled.

By the terms of the merger agreement, Kidde and USL are obligated to operate USL "in a reasonably prudent, competitive, business-like manner consistent with business practices generally prevailing in the shipping industry at all times subsequent to the date of this agreement and prior to the effective date of the merger."

The supplemental agreement, attached as an exhibit to the merger agreement, is an agreement solely between Reynolds and Kidde. The supplemental agreement provides that if the merger agreement does not receive the required approvals, or if the merger is enjoined by a court of competent jurisdiction, or if required approvals are not received prior to November 9, 1975, an independent financial institution will have the responsibility of making an alternative disposition of USL, with Reynolds guaranteeing Kidde that it will receive $65 million for its interest in USL.

If consummation of the merger becomes impossible for any reason, the supplemental agreement provides that "neither Reynolds nor any subsidiary or affiliate shall have

any control over the finding and designation of any substitute party. . . ." Reynolds will have no standing to object to a substitute purchaser chosen by the independent financial institution unless Kidde requests a Reynolds' guaranty of the substitute purchaser's credit, and Reynolds has a good faith doubt as to the credit-worthiness of the substitute purchaser, or the price offered by the substitute purchaser is determined to be below the fair market value of USL as a going concern.

If a substitute purchaser is located by the independent financial institution, then the sale to that purchaser would be consummated. Of course, if disposition pursuant to the supplemental agreement results in a sale to another common carrier by water or other person subject to the Act, such a transaction would be subjected to Commission scrutiny under section 15. If the value paid by the substitute purchaser to Kidde is less than $65 million, the difference between the sales price and $65 million will be made up by Reynolds.

If the independent financial institution is unable to locate a substitute purchaser, the institution is obligated to make an alternative disposition of USL. In that event, the institution may arrange a public underwriting of USL's stock, it may distribute USL's stock on a pro rata basis to Reynolds' shareholders, or, as a last alternative it may sell USL's assets at competitive bidding. The supplemental agreement provides that the independent financial institution shall make every possible effort to assure that USL continues as a going viable shipping company.

The promissory note is a note drawn by Reynolds to Kidde in the principal sum of $65 million. Although the

note bears an annual interest rate of 8 percent and the computation of interest commences on November 9, 1970, the interest is payable only after the note has been delivered to Kidde. The due date to be inserted on the promissory note is the effective date of the merger (ten days after the last required approval) or November 9, 1974, whichever is later. If the effective date of the merger does not occur prior to November 9, 1975, the date to be inserted as the payable date of the note will be November 9, 1976.

By our action herein we are taking jurisdiction over the merger, supplemental agreement and promissory note, in addition to the charter agreement. We are not, however, approving the charter or the proposed merger. What we are doing is modifying the proposed agreement and approving the acquisition of USL by Reynolds upon certain conditions to permit continued Federal Maritime Commission surveillance over the acquisition, reserving to ourselves the authority the Commission has over all agreements approved by us under section 15 of the Shipping Act, 1916. In addition, and as part of our approval of that acquisition, we disapprove the supplemental agreement and approve the promissory note.

We are formulating herein a maritime decision in light of the overall domestic and international merchant marine situation of the day, and we are giving notice as to what the Commission will accept in furtherance of the effort to enable the American merchant marine to compete with the merchants fleets of other countries who espouse and utilize consortia, mergers and other cartel-type activities in this industry. Although we appreciate the position of the Department of Justice, as well as the other interested

parties to this proceeding, we find that our decision herein is required by our overriding duty to protect the foreign waterborne commerce of the United States; and a very important tool in the implementation of that responsibility is an American merchant marine which is permitted to have active companies as strong financially as the commercially or governmentally mandated conglomerates of foreign merchant marines.

The Department of Justice has not taken a position when foreign countries and their merchant marines have formed corporate combinations which are contrary to our antitrust policy and laws. It appears that while such is permissible for foreign participants in our ocean commerce, when the same is engaged in by our own carriers, the arsenal of federal antitrust weapons is leveled against it. For the Justice Department to acquiesce in actions taking place in other countries which have a direct effect on our foreign commerce and then attempt to restrain American firms from competing with the same tools, in our opinion, is not in the best interests of the foreign commerce of the United States. This negative approach by the Department of Justice and the other parties to this case will seriously hamper and limit the competitive thrust of the American merchant marine and negate the mandate of our shipping laws for equal treatment of all flag carriers. Such a result is especially odious when the balance is weighted against our own merchant fleet, particularly at a time when our country is attempting to do everything possible to alleviate trade deficits and place American corporations, which must compete internationally, in a viable competitive position.

Kidde has made no attempt to develop the field of waterborne transportation and now gives evidence of intending to dismember USL if prevented from a complete divestiture of the whole. On the other hand, we see Reynolds wishing to acquire United States Lines, having experience in the foreign waterborne commerce of the U.S. by virtue of its ownership of Sea-Land, and willing to inject financial life into USL with a fresh approach to the operation of USL as a viable member of our merchant marine.

The proponents have stated that they will keep USL independent of Sea-Land in all ways, and we are attaching conditions under which Reynolds, through RJI can operate USL and implement their willingness to keep USL's identity in all respects separate from Sea-Land's. The conditions will permit us to follow the progress of the acquisition and, at any time in the future, demand Reynolds' divestiture of USL if operations are not in character with our original approval. We are insuring this, among other ways, by requiring that all types of concerted action between USL and Sea-Land receive prior approval of the F.M.C. In addition, Reynolds has a history of control over independent competing interests, as in the tobacco industry.

The agreement we are approving is not the type merger as were the Prudential-Grace or the proposed APL/PFEL/AML mergers, whereby independent identities were either effectively blended into one or the same result reserved by the parties to accomplish. We are empowered to keep and are intent upon keeping a very close regulatory watch on the relationship of Sea-Land and USL, following their activities as the Congressionally established trustee for the public interest in the foreign waterborne commerce of the United States.

Report of the Federal Maritime Commission

With respect to the primary Justice Department concern, that being the carriage of military and other government cargo, in our approval of a modified acquisition, we are placing regulatory restraints on the carriers' dealings with the Military Sealift Command including the requirement that the parties submit reports to the Commission and grant the Commission access to their records. Also, other types of information may be required to be filed with the F.M.C. to insure against the government being charged unreasonably high rates.

In consideration of Reynolds' willingness to help ensure that USL will remain a continuing viable company, in the absence of any other financial interest coming forward, and with the knowledge that Kidde wants to be rid of USL and may in frustration dismantle the company, we are taking an action which will permit Reynolds to infuse new private money into USL and the merchant marine.

While our ultimate conclusions differ from those of the Chief Administrative Law Judge, our examination of his findings of fact and the exceptions thereto convince us that those findings were well founded and proper and we adopt them as our own. In order to place our discussion and conclusions in their proper context we set forth immediately below the initial decision in its entirety.[A6]

[A6] Only the style of the case, headnotes, appearances, etc., have been omitted. We have not renumbered his footnotes.

Initial Decision of C. W. Robinson, Presiding Examiner[1]

The agreement here involved (the agreement or merger agreement), dated November 9, 1970, was filed with the Commission on the same date for approval under section 15 of the Shipping Act, 1916 (the Act).[2] The agreement provides, among other things, that RJI Corporation (RJI), a newly formed corporation wholly owned by Reynolds Tobacco Company (Reynolds), shall be merged into United States Lines, Inc. (USL), wholly owned by Walter Kidde Company, Inc. (Kidde), and that RJI shall cease as a corporate organization. In exchange for Reynolds' promissory note (see second paragraph below), Kidde will deliver to Reynolds all the outstanding stock of USL, and USL will be a wholly owned subsidiary of Reynolds. Upon failure of approval by this Commission, the Interstate Commerce Commission, or the Maritime Administration, or approval on terms and conditions not acceptable to Reynolds, the agreement shall be automatically canceled, as will the proposed charter by Sea-Land Service, Inc. (Sea-Land), wholly owned by Reynolds, of USL's vessels under Agreement No. 9827 (Docket No. 69-56).[3] If both the charter and the

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[1] This decision will become the decision of the Commission in the absence of exceptions thereto or review thereof by the Commission. Rule 13(g), Rules of Practice and Procedure, 46 CFR 502.227.

[2] Approval also is sought from the Interstate Commerce Commission and the Maritime Administration of the Department of Commerce.

[3] Agreement No. 9827, dated October 27, 1969, and filed with the Commission for approval under section 15 of the Act, proposed that USL will charter to Sea-Land 16 containerships and related equipment for a period of 20 years, with the option to purchase at the end of the charter. The total payment to USL would be over $1 billion. The matter proceeded through hearing, an Ex-

merger agreements are approved, the effective date of the charter is to be deferred until consummation of the merger, in which case the charter will be an intra-corporate transaction between two wholly owned subdivisions of Reynolds.

A supplemental agreement attached to the agreement sets forth the duties and obligations of Reynolds to Kidde should the merger not be consummated (more details later). The supplemental agreement will not be affected by the disapproval of the agreement, or approval on terms and conditions not acceptable to Reynolds.

A second attachment to the agreement is an 8-percent promissory note of Reynolds to Kidde for $65 million, dated and bearing interest from November 9, 1970, and maturing either in 1974 at the earliest or in 1976 at the latest.

By order served December 16, 1970, the Commission instituted this proceeding to determine whether the agreement should be approved, disapproved, or modified. The order states that the supplemental agreement and the promissory note, although attached to the agreement, "were not specifically filed" (for approval). The parties are directed by the order to address themselves to the following matters (verbatim):

1. The transportation needs which necessitate the merger and the derivative benefits to the public of any approval;

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aminer's initial decision, a reopening by the Commission, and a supplemental initial decision. The charter was approved by the Examiner. The Commission suspended the time for filing exceptions to the initial decisions and denied a motion to discontinue the proceeding in order "to permit consideration of the charter * * * when the merger agreement proceeding * * * is ready for Commission decision." It is agreed that reference may be made in the present proceeding to the evidence in No. 69-56.

2. Whether the Commission has section 15 jurisdiction over the parties and the Merger Agreement;

3. Whether the Supplemental Agreement and the promissory note are section 15 agreements, and if so, should they be approved;

4. The nature, scope and characteristics of the presently competing transportation systems;

5. The impact of approval upon container, breakbulk, commercial and military movements;

6. The impact of approval on proponents' competitors, both U. S. and foreign;

7. Reynolds' plans for merging USL into its corporate structure and its plan for the operation and control of USL;

8. The effect on the current USL and Sea-Land vessel deployments of the merger;

9. The future service intentions of Reynolds, Sea-Land and USL assuming approval and disapproval of the merger;

10. The possible loss of benefits from the maintenance of an independent USL which would have existed under the charter, but would not exist if the merger is effectuated;

11. The impact of approval upon labor;

12. The relevant market;

13. The basis for determining the amount of payment under the merger; and

14. Alternatives available for satisfying any asserted transportation needs, realizing any asserted public benefits, or facilitating Kidde's disposal of USL.[4]

[4] The discussion and conclusions will not always correspond with the exact wording of the order, but all subjects will be covered.

The following intervened: Maritime Administration of the Department of Commerce, International Longshoremen's Association, AFL-CIO (ILA), National Marine Engineers Beneficial Association, AFL-CIO (MEBA), International Organization of Masters, Mates and Pilots, AFL-CIO (MMP), Marshal P. Safir, and Arnold Weisberger. Although named as parties in the order of investigation, neither Pacific Far East Line, Inc. (PFEL), nor Prudential-Grace Lines, Inc. (P-G), participated in the hearing or filed briefs.

The hearing consumed 26 whole or partial days; 25 witnesses testified; 193 exhibits were received or marked for identification; and the transcript totaled 3676 pages.

Basic Facts[5]

Preliminary

1. The house of Reynolds, one of the country's largest business concerns, wholly owns McLean Industries, Inc., which in turn wholly owns Sea-Land. Kidde is also a many-faceted company, with about 80 subsidiaries in the United States and abroad. Kidde first acquired a stock interest in USL late in January 1967; in January 1969 complete ownership was accomplished. At the end of 1970 Kidde's assets were $514 million; its net sales and operating revenue for that year were $818 million.

2. From the deposition taken of him on January 21, 1970, the chairman of Kidde, Fred R. Sullivan, seemed

[5] Other facts will be found under the heading "Discussion and Conclusions."

pleased with the performance of USL. One month later Sullivan and the president of Kidde informed USL's president, John J. McMullen, that USL's results were unsatisfactory and that they would consider the sale of USL. McMullen expressed an interest in buying the company, but after considerable dickering the matter fell through. In the meantime, Kidde enlisted the services of several investment firms to explore the possibility of sale, but again the efforts were unavailing. Kidde was advised by these firms that the charter was not the answer to the problems of Kidde and USL.

3. In October 1970, at breakfast in Sullivan's home, Sullivan and Malcolm McLean, a director of RJI and president of McLean Industries, Inc., initiated discussions on what very shortly became the merger under consideration. Whether McLean had previously telephoned Sullivan to find out about the status of the charter proceeding—as is McLean's recollection—or whether he telephoned to ask whether Kidde was interested in selling USL to Reynolds —as Sullivan recalls—is wholly immaterial. Neither the president nor vice president of USL was aware of the negotiations.

4. As already seen, in case the merger is disapproved, or approved on terms not acceptable to Reynolds, the supplemental agreement comes into play. Under it Reynolds is obligated, not later than November 9, 1976, to find a substitute buyer who will assume Reynolds' obligations under the merger agreement. The substitute has a choice of merger, stock acquisition, or purchase of assets and liabilities. Selection by Reynolds of a substitute is vested in a

financial institution of Reynolds' choice, subject to veto by Reynolds if Kidde exercises its right to secure a guarantee by Reynolds of the substitute's note or if the fair value of USL, in Reynolds' judgment, is in excess of the price offered by the substitute. The financial institution is to credit any proceeds received from the disposition of USL as a part payment of the Reynolds note, which, unless fully satisfied, will be delivered to Kidde. Disposition may be accomplished by public sale of USL stock, distribution of the stock to Reynolds stockholders, public auction of USL's assets, or a combination of these alternatives, but there is a preference for preserving USL as an operating entity so long as this is not materially disadvantageous to Reynolds.

U. S.-flag container services

5. For many years USL, as a subsidized line, operated a large number of breakbulk vessels in the North Atlantic/Europe and Atlantic coast/Far East trades. Its subsidy contract, under which it had received about 18 percent of the total subsidy paid to all operators, expired in 1969. The renewal application was never carried through, and a temporary extension on one route ended in 1970.

6. In 1968-69 USL put into service in the North Atlantic trade its eight "Lancer" class containerships, having individual capacity of about 1200 20-foot container equivalents and a speed in excess of 23 knots. The company also converted eight Mariner vessels into containerships (now referred to as "Leader" vessels), with individual capacity of 929 20-foot container equivalents and a speed in excess of 20 knots. These two types are excellent vessels and constitute the second largest containership fleet in the world.

Six Leaders are used in two weekly services between Atlantic ports and western Europe, and represent the largest containership operation in this sphere. The other two Leaders, together with the eight Lancers, operate on a six-day schedule between east and west coast ports, on the one hand, and the Far East, on the other hand, in what is known as the "Seabridge" or tricontinental service, established in September 1970. Transshipment at New York, eastbound and westbound, enables USL to supply a through service between Europe, the North Atlantic, the west coast, Hawaii, and the Far East, as well as an intercoastal service. Both the North Atlantic and the Far East services are connected with feeder services at their foreign destinations.

7. In addition to its containership fleet, USL has 14 "Challenger" class breakbulk vessels under charter to the military. These have a speed in excess of 22 knots and an average deadweight capacity of 13,500 tons; 11 have an above-deck capacity for about 128 20-foot container equivalents each.

8. USL operated profitably until 1966. In 1967 it sustained an operating loss of $2 million; in 1968, a loss of $9 million; in 1969, the first full year in which the Lancer vessels were used, a profit of $8 million; and in 1970, a year of transition when subsidy had expired, a loss of $3 million. The 1968 loss is accounted for to some significant extent by write offs. The profit for 1969 would have been only $600,000 without reserves, and in 1970 the loss would have been $12.6 million without reserves. The company's net cash outflow in 1970 was about $5.7 million, excluding the cost of long-term debt. In the last quarter of 1970 the

company was unable to meet day-by-day expenses and obligations. Losses for the first two months of 1971 were estimated at $1 million before taxes and application of reserves; for the entire year, the estimate was that operating revenue would exceed cash requirements by $35 million.

9. As of the time of the hearing, the principal bank debt of USL approximated $27.6 million and was to mature on March 31, 1971 (subsequent to the completion of the hearing). The company being unable to make payment, negotiations were under way among Kidde, USL, and the banks looking toward an acceptable refinancing program in place of 30-day extensions, the latest of which expired on May 31, 1971. Late-filed exhibit no. 193, a letter from Kidde's attorney to the Examiner, dated May 27, 1971, states that a further extension was expected until June 30, 1971. In May, USL secured $15 million from another source, secured by a mortgage on two unencumbered Lancer vessels, plus a guarantee by Kidde to advance $2 million additional collateral in case of USL's default, or in the alternative, at Kidde's option, for Kidde to purchase USL's total obligations under the mortgage agreement. As of the time of hearing Kidde had advanced to USL a total of $9 million. After allocating to Kidde $2 million from the new loan, the balance of $13 million was applied as follows: approximately $5.3 million for USL operating working capital, and approximately $7.6 million as payment to the banks, which reduced bank loans to $20 million.

10. Sea-Land, an unsubsidized company, began a coastwise containership service in 1956. This was expanded in due course to Puerto Rico, the intercoastal trade, Alaska,

the Dominican Republic, Jamaica, and other Caribbean islands. More relevant to the present proceeding, however, are the services between the U. S. North Atlantic and northern Europe and the Mediterranean, and between the Pacific coast and the Far East, about which more will be said hereafter. Suffice it to say at this point, Sea-Land is the world's largest containership operator.

11. The carriage by Sea-Land of military cargo in containerships began in 1966, from the Pacific coast to the Far East. There followed, at the end of 1968, an eastbound commercial service to the Pacific coast from the Far East with vessels which carried military cargo westbound. Finally, in early 1971, a westbound commercial service in that trade was started in order to fill space not used for military cargo. In January 1971 the North Atlantic/northern Europe commercial service was twice weekly; to the Mediterranean, once weekly. The various U. S.-foreign services utilize chartered foreign-flag feederships and U.S.-flag feederships are used in the domestic relay system (a total of 15 ships with a capacity of over 2700 20-foot container equivalents).

12. At the time of hearing Sea-Land either owned or chartered 63 linehaul containerships,[6] two of which, with a speed in excess of 22 knots, were under construction in Germany in 1970 for Matson Navigation Company and purchased at that time for $30 million by a Reynolds sub-

[6] This number has been settled upon after examination of the whole record. The parties do not agree on a number. Sea-Land's exhibits 49 and 125 are not compatible, as understood by the Examiner.

sidiary on behalf of Sea-Land (a third may be acquired).[7] The capacity of the 63 ships is 34,644 20-foot container equivalents, plus 646 40-foot containers. To be added to the foregoing are eight vessels financed by Reynolds and under construction in Germany and the Netherlands, each with a capacity of 1948 20-foot container equivalents and geared to 33 knots, and will be chartered by Sea-Land. These will be the largest and fastest containerships in the world. Delivery is estimated to commence in January 1972, the last one to be received in September 1973 or shortly thereafter.

13. The two Matson ships and the eight ships being built in Europe will offer more container capacity than that of any other American-flag operator. The 17 vessels used in the domestic trades also exceed the number of ships operated by any other U. S.-flag operator in both the foreign and domestic services. Aside from the Matson vessels, the presently owned fleet is composed principally of vessels constructed during World War II (and later converted) and are slow and of limited capacity. From four to six of the oldest vessels may be retired by 1974.

14. The commencement by USL of the Seabridge service in 1970 made that company the only direct competitor of Sea-Land in the total U. S. foreign commerce. As already noted, the two companies are the largest containership operators in the North Atlantic. Now served by relay via Puerto Rico, Sea-Land has been considering a direct serv-

[7] One was chartered to Sea-Land on December 31, 1970, for a term of five years; the second is to be delivered in 1971 under a 5-year charter.

ice between the Atlantic coast and the Far East.[8] There also are expansion plans for that trade irrespective of the outcome of the present proceeding. Sea-Land and USL are highly competitive for the carriage of military cargo. For instance, under RFP 500 (July 1970-June 1971) USL underbid Sea-Land in five of the seven transpacific trade zones, and the same was true in all three North Atlantic/Mediterranean zones. In June 1971 Sea-Land received a two-year $71 million contract to carry military cargo to Vietnam.

15. Sea-Land's marketing methods are extensive and designed to take advantage of all trade possibilities in the United States and abroad. Its domestic relay activities provide a vast and unique opportunity to gather cargo for its linehaul ships in the foreign trade; no other U. S.-flag containership operator is able at present to match these competitive efforts. This exertive force will be further expanded through 1975 even should the merger not be approved.

16. For the first three quarters of 1970, Sea-Land's profit (or loss) for its various services here concerned was as follows:

North Atlantic	$ 363,000
Mediterranean	(3,793,000)
Viet Nam	18,802,000
Okinawa Philippines	5,043,000
Far East commercial	4,632,000
Foreign commercial	1,202,000
Military contracts	23,845,000

[8] Official notice is taken that Sea-Land became a member of the Far East Conference (Route 12) on August 20, 1971.

The profit of $1,202,000 on foreign commercial shipments was derived from revenues of $70,045,000, and is a rather low return. In contrast, the profit of $23,845,000 on military contracts was predicated on revenues of $74,999,000.

17. American Export Isbrandtsen Lines, Inc. (AEIL), has a weekly service on Trade Route 5-7-8-9, utilizing three new "Seawitch" class containerships with an individual capacity of 928 20-foot container equivalents and a speed of 21 knots. This is the most important route in American foreign commerce (North Atlantic U. K., Ireland, the Continent (Germany south of Denmark to northern border of Portugal)); it also has the largest percentage of cargo moving in containers (about 60 percent in 1969), which has brought U. S.-flag breakbulk operations to a virtual halt.

18. There also is an AEIL weekly Mediterranean service on Trade Route 10 (North Atlantic Mediterranean), in which there are utilized four modern "Seabridge" class roll-on-roll-off containerships, recently purchased from Moore-McCormack Lines, Incorporated, with an individual capacity of 824 20-foot container equivalents and a speed of 24 knots, and one converted containership; also a fortnightly service with four breakbulk ships. This route has been the company's basic area of operation and is the oldest American-flag service in the area. About 30 percent of the cargo on the route is tied in to foreign-flag vessels, and only about 30 percent of the general liner cargo is containerized because of the underdeveloped economy of the area. Sea-Land entered the trade several years ago as the result

of a low bid on military cargo; its financial results therefrom have been so unsatisfactory that it recently announced a switchover to foreign-flag vessels. AEIL also operates on two other trade routes: a fortnightly service on No. 18 (Atlantic and Gulf/India, Persian Gulf, Red Sea) with nine breakbulk ships, and a 12-day service on No. 12 (Atlantic/Far East) with seven partial containerships about 10 years old.

19. Three more Seawitch vessels are scheduled for delivery to AEIL in 1972-73. The company also must take further steps to upgrade its fleet in order to fulfill obligations under operating-differential subsidy contracts with the Maritime Administration. If the Seabridge vessels are jumboized their container capacity would be nearly doubled. There are a few breakbulk vessels which could be converted to containerships.

20. American President Lines, Inc. (APL), operates three all-freight subsidized services, competitive to some extent with Sea-Land and USL. A weekly transpacific service between California and the Far East utilizes five new breakbulk vessels with ondeck container capacity, two largely containerized vessels, and usually one additional such vessel; this service is profitable. The round-the-world service operates on fortnightly frequency, using seven Mariner vessels capable of carrying containers on deck and in the square of the hatches; there are marginal results from this service. The Atlantic Straits service serves the Atlantic coast, California, the Far East, and Malaysia with seven breakbulk vessels on a 15-day frequency, and is not profitable.

21. There are under construction for APL four "Pacesetter" class containerships, having an individual capacity of 1209 20-foot container equivalents and a speed of 23 knots. Delivery is called for between July 1972 and March 1973, and they are scheduled for the transpacific service. Five "Sea Master" class vessels in the transpacific service are to be converted to containerships having a speed of 23 knots and an individual capacity of 876 containers; these are planned for delivery between February and August 1972 and eventually will be used in the Atlantic/Straits service. The Mariner vessels probably will be converted to full containerships for the round-the-world service. There will be containership operation in some form in all three services by 1973.

22. Completely owned by APL,[9] American Mail Line Ltd. (AML) has two subsidized services, both competitive with Sea-Land and USL. One service, between the Pacific Northwest and the Far East, utilizes five C-5 vessels and two Mariner breakbulk vessels on a 9-10 day frequency. The C-5's can carry 469 containers on deck and in the hatch wings, and at the time of hearing they were the largest freighters in the world. The other service, on a monthly schedule, originates in the Pacific Northwest and proceeds to Southeast Asia, turning at Calcutta and East Pakistan and returning via California. Three Mariners, which can carry some deck containers, ply this route; the service is unprofitable. The company is converting three Mariners to full containerships, with an individual capacity of 892 20-foot container equivalents, to be used between

[9] This has come about since the hearing.

the Pacific Northwest and Japan. Four of the C-5's will be kept on the Far East run and one may join the other two Mariners in the Southeast Asia-Bay of Bengal service.

23. In addition to its domestic container services (Atlantic/Puerto Rico, west coast Hawaii, and Guam), Seatrain has an Atlantic North Europe container service, and is considering a west coast Far East service. Its North Atlantic fleet is being replaced with four containerships having individual capacities of 1900 20-foot container equivalents and a speed of about 25 knots, under construction in Germany for operation under the British flag. The company has no long-range plans to operate under the American flag on the North Atlantic. In addition to its common carrier services, Seatrain owns and operates tankers and bulk vessels, some under foreign flag, under charter for the carriage, principally, of oil and grain. Another endeavor is the operation of the ex-Brooklyn Navy Yard. The company's assets have increased from $72 million in 1966 to $206 million in 1969.

24. Although, as mentioned, PFEL and P-G were named as parties to the proceeding, they did not participate in the hearing and did not file briefs. PFEL operates a weekly subsidized service on Trade Route 29 (transpacific, broadly speaking) with nine breakbulk vessels. Recently it purchased from The Oceanic Steamship Company four ships which had been operated on Trade Route 27 (Pacific coast/Australia and New Zealand) and two containerships under construction, the latter having an individual capacity of about 1450 20-foot container equivalents and a speed of 23 knots; these should enter service in 1972-73

and it is contemplated that they will ply Route 29 in exchange for two vessels now operating thereon. In addition to the above, PFEL has six LASH-type ships on order or under construction, with an individual capacity of about 1500 20-foot container equivalents and a speed of 23 knots, to be used on Route 29.

25. P-G, a subsidized operator, is acquiring five LASH-type vessels for operation on Route 10 (at least one has been delivered), with an individual capacity of about 1500 20-foot container equivalents and a speed of 23 knots. Since consolidation of Prudential and Grace there is a subsidized service between the Atlantic and Pacific, respectively, and the Caribbean and east and west coast of South America, which have no U.S.-flag competition.

26. Not a party to the proceeding, Lykes Bros. Steamship Co., Inc., has under construction three "Seabee"-type vessels with an individual capacity of 1800 20-foot container equivalents and a speed of 20 knots, for probable operation on Route 21 (Gulf western Europe). In addition, there are nine units scheduled for conversion to part containerships, with an individual capacity of fewer than 200 20-foot containers and a speed of under 18 knots. The company also operates in other important trades

27. Another line not made a party to the proceeding, Farrell Line Incorporated, operates a subsidized service on Route 16 (Atlantic-Gulf/Australia and New Zealand), rather recently purchased from USL, for which it has under construction four containerships with an individual capacity of 978 20-foot container equivalents and a speed

of 23 knots, for delivery in 1971-72. The company also has two newish part containerships with an individual capacity of 232 20-foot containers and a speed of 21 knots. In addition to the southwest Pacific run, there is a service to South and East Africa from the Atlantic (Route 15-A), which is the company's original area of operation.

28. Moore-McCormack Lines, Incorporated, not a party to the proceeding, formerly operated a service on Route 5-7-8-9, but its four new roll-on-roll-off ships in that service were sold recently to AEIL, as previously mentioned. It owns six part containerships about five years old, with an individual capacity of 301 20-foot containers and a speed of 21 knots, and five older and slower part containerships.

29. The last of the U. S.-flag containership operators to be here mentioned—also not a party to the proceeding—is States Steamship Company.[10] This line has five ships with an individual capacity of 200 20-foot containers and a speed of 23 knots, plus six which can carry 167 20-foot containers each at a speed of 20 knots. Both classes of ships serve the transpacific trade (in its broad connotation).[11]

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[10] Delta Steamship Lines, Inc., a subsidized operator, has services from the Gulf to South America and to Africa, but the record contains no information as to it which is comparable to that of the other lines.

[11] Some of the information concerning the carriers referred to has been obtained from "Essential United States Foreign Trade Routes," December 1969, published by the Maritime Administration of the Department of Commerce.

Foreign-flag competition

30. Without going into detail, the record is replete with the many combination and individual company operations of foreign-flag containerships in direct competition with U. S.-flag counterparts. The principal areas of this competition are Atlantic North Europe, Atlantic Mediterranean, Pacific Far East, and Atlantic Far East. These operations continue to grow as new and efficient vessels are added.

31. It was estimated by the economic witness for APL-AML that by mid 1971 the one-way annual container capacity on the routes just mentioned would be as follows:

	U. S. Flag	*Foreign Flag*
No. 5-7-8-9	240,452	344,003
No. 10	62,882	38,189
No. 12	46,147	None
No. 29	152,756	108,426
Total	502,237	490,618

Relevant market

32. As already seen, the routes where competition between U. S.-flag and foreign-flag containership services is most acute are Atlantic North Europe, Atlantic Mediterranean, Atlantic Far East, and Pacific Far East. Responsible witnesses for Sea-Land and USL agree that vessels carrying only containers are the most economically practical for a container service. Furthermore, containership operation is generally considered to be one that is apart from other types of service.

33. Almost hopelessly irreconcilable are the statistics pertaining to the available containerable [12] commercial cargo on the relevant routes. Here, as in most cases where cargo estimates are made, there is a technical battle between the preparers of the estimates, representing as they do opposing interests in the matters at issue. The Examiner does not propose to enter this mental arena as he believes it to be unnecessary for present purposes. It is sufficient, under the circumstances, to conclude that in 1970 a reasonable estimate of such cargo was in the general magnitude of 8,000,000 long tons (in and out) on Route 5-7-8-9; 2,000,000 long tons (in and out) on Route 10; 4,000,000 long tons (in and out) on Route 12; and 3,000,000 long tons (in and out) on Route 29—or a total of 17,000,000 long tons.[13]

Containerized cargo carried

34. In 1969, the only year of record, and limited to routes 5-7-8-9 and 29 (the two largest areas), 3,078,257 long tons (in and out) of containerized cargo were carried by U. S.-flag and foreign-flag lines on the former, with U. S.-flag vessels accounting for 60 percent; on Route 29 there were 2,093,379 long tons (in and out) of containerized cargo, with 61 percent handled by U. S.-flag vessels. The figures for both routes include commercial, military, and mail cargo. Limited to commercial cargo, 2,769,097 tons were carried by all flags on No. 5-7-8-9, 56 percent

[12] The Examiner prefers this spelling to "containerizable".

[13] To enable the reader to avoid plodding through a mass of data, see Exhibit 423, table B-44 (as corrected), in Docket No. 69-56.

of which was on U. S.-flag vessels; on No. 29, 1,206,703 tons of commerical cargo were carried, 34 percent of which was on U. S-flag vessels.

Cargo reserved to U. S.-flag

35. Certain cargoes are reserved by law to vessels flying the U. S.-flag. One such type is military cargo, the other is government-impelled commercial cargo. These two classes are very important to the welfare of the American lines.

36. In 1969, on Route 5-7-8-9, military cargo amounted to 36 percent of all U. S.-flag outbound traffic; on Route 29, 81 percent. Outbound and inbound, 19 percent of the U. S-flag container cargo on No. 5-7-8-9 was military; on No. 29, 66 percent. Government-impelled cargo constituted 21 percent of the commercial liner exports in 1969, 61 percent of which was carried by U. S.-flag vessels.

37. Sea-Land carries about 95 percent of the transpacific military cargo. Receipts of about $91 million in 1969 from military cargo were nearly twice that of any competitor. In the same year, military and government-impelled cargoes amounted to 62 percent of the revenue tons handled by Sea-Land in its foreign services. For the first three quarters of 1970, Sea-Land's revenues from military cargo represented about 60 percent of the company's total revenues and about 50 percent of its cash return. For APL and AML, military and government-impelled cargoes were about 70 percent of their outbound transpacific volume in 1969 and 1970.

Cargo wedded to foreign flag

38. A part of the cargo in the foreign commerce of the United States moves by foreign-flag vessels because of nationalistic preference. This is quite easily understood and appreciated.[14] About 40 percent of the desirable liner cargo from the Pacific coast to Japan finds itself in Japanese vessels. Sea-Land, in its projections, estimates that 45-50 percent of the U. S.-Japanese trade will be garnered by the Japanese lines. USL agrees that the Japanese lines will predominate. The Japanese situation is largely the result of immense business combines that include steamship companies. To a lesser extent the flag-conscious situation exists in other trans-pacific trades. It was estimated that about 30 percent of the Atlantic-Europe trade is safely within the province of foreign-flag lines.

Plans of Reynolds, USL, Sea-Land

Item 7 of page 3 of the order of investigation, as seen earlier, calls for "Reynolds' plans for merging USL into its corporate structure and its plan for the operation and control of USL," and item 9 seeks "The future service intentions of Reynolds, Sea-Land and USL assuming approval and disapproval of the merger." As it would be quite difficut to divorce the two items in any discussion, they will be handled together for convenience and comprehensive understanding. The statements below, unless indicated to the contrary, are those of the respective parties and are not necessarily the conclusions of the Examiner.

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[14] There seems to be a growing feeling in this country that a modicum of U. S.-flag preference is emerging.

39. *If merger is approved.* Following approval, Reynolds would maintain USL as a wholly owned subsidiary, with continued operation under the existing name, and independent of Sea-Land. USL would have its own management, accounting, labor relations, and construction funds. If the charter between Sea-Land and USL is approved (Docket No. 69-56), USL will man and operate its 16 containerships for the account of Sea-Land for a 20-year period, subject to all the terms of the charter agreement. As pointed out earlier, approval of the charter would mean more than $1 billion for USL over the 20-year period ($30 million annually), and Reynolds would negotiate with the Maritime Administration for a tax-deferred fund under the Maritime Act of 1970 to enable construction of various types of ships. Should there be competing operations, Sea-Land vis-a-vis USL, this would be eliminated to ensure dependable service to shippers.

40. It has been the policy of Reynolds to contribute its resources and skills to assist acquired concerns in order to place them on a sound financial basis. Furthermore, Reynolds sees to it that its subsidiaries are operated in a reasonable and prudent business and financial manner. In the case of USL, Reynolds would render assistance through capital advances, renegotiation of outstanding debts, and whatever else would be necessary to assure that USL would have a current debt status.

41. USL would expand its operations into other areas, and would operate its 14 Challenger breakbulk vessels under the merger regardless of whether the charter is

approved; furthermore, they will not be used by or for Sea-Land. Reynolds would accept as a consideration for approval of the merger that it would obtain prior approval of the Commission should it decide to transfer the use of the Challengers from USL to Sea-Land. As another concession, Reynolds would obtain approval of the Commission before a change is made in the charter. Now under charter to the military, as previously mentioned, USL would prefer to keep the Challengers on military charter. Should the military terminate the charters, USL could operate all or some of the ships in commercial breakbulk services, convert all or some to containerships, charter all or some to other operators, or sell one or more.

42. Sea-Land will obtain the use of the 16 USL containerships upon approval of both the merger and the charter. These vessels will upgrade Sea-Land's fleet of vintage ships, and will be integrated into Sea-Land's worldwide system of terminals and services to achieve high productivity. As of the time of the hearing, Sea-Land had not established fixed deployment of USL's containerships for the 20-year charter period. Although there was a suggestion as to how the combined Sea-Land and USL fleets might be used by 1973-74, the prognostication is of little value inasmuch as many factors would have to be considered in the meantime. As for its own ships, it was stated that the first two of the eight large SL-7 vessels building or on order in Holland and Germany would be used in the transatlantic trade, and that the next several would be used in the transpacific trade. After the implementation of the charter Sea-Land would maintain basically the same level of service in each trade as did USL.

43. *If merger is disapproved.* In this event, USL would continue to operate its containerships as at present, pending eventual disposition of the company in accordance with the supplemental agreement. The principal witness for Reynolds testified that, following disapproval, USL would be sold "as a going concern." As already pointed out, an independent financial institution will dispose of USL, but the operation of the company will not be affected and Reynolds will have no legal right to interfere with USL's general competitive capability. Reynolds can only take steps to protect itself against guaranteeing the credit of a poor-risk purchaser, and seeing to it that the price received for the sale of USL is reasonably related to fair market value at the time of sale.

44. Sea-Land would follow through with plans to broaden its operations both as to sailings and areas served, and would take whatever steps necessary for an aggressive and well-run company to maintain its place in the sun. Between 1973 and 1975 the following deployment of its vessels is either proposed or contemplated:

> In 1973 five additional SL-7s and one additional Matson type vessel will become part of the fleet. One SL-7 will be added to the North Atlantic, joining the earlier SL-7 vessel placed in this trade providing weekly service in each direction with these high speed ships. The remaining SL-7 ships will be placed in the Far East service. With a call every week in the Far East, four additional feeders will be necessary to collect the cargo from the outports to fill these vessels.
>
> With the expected drop in military cargo, the six C-4J vessels will be transferred from the Viet Nam

service to the Intercoastal service where they will serve New York directly. The added space will be necessary to handle the expected East Coast/Far East commercial freight in both directions.

A shuttle service will be instituted on the West Coast to collect and distribute the SL-7 cargo and the Texas service will increase capacity from 225 vans per week to 360 vans per week to handle the extra freight needed for Europe.

The two Matson ships released from the North Atlantic and an additional vessel of similar characteristics, which will have to be acquired, will be placed in the Mediterranean service. Feeder capacity will have to be expanded to three vessels in order to fill the weekly capacity of the Matson type vessels.

With the additional capacity delivered and redeployment of the fleet to provide maximum competitive service six C2 vessels (with cranes) and two C2X vessels (without cranes) will be excess and are not included in the deployment schedules. Such vessels can then either be sold, sub-chartered, or used to develop market opportunities not yet fully explored.

45. Although Sea-Land's deployment, by its very nature, must be tentative and flexible in the next few years, the foregoing excerpt represents management's best judgment; no reason appears why it should not be accepted for what it is, namely, an educated forecast.

Impact upon labor

46. *ILA* is the longshore union whose members load and unload vessels serving Atlantic and Gulf ports, irrespective of flag. It also performs terminal functions such as

stuffing and stripping containers and loading and unloading trucks. Regardless of whether the merger is approved, this union will continue to perform those functions. Its principal concern is that the proposed merger would reduce the number of longshoremen needed to handle the traffic. Sea-Land and USL use different terminals; if the merger is approved, and to the extent possible, Sea-Land would consolidate its operations in each port at a single terminal and USL terminals would cease to be utilized. As a consequence, Sea-Land projects a loss of several million dollars in longshore wages a year in loading and unloading operations. There also is another factor: the number of longshoremen has decreased with the advent and development of containerization, and as breakbulk transportation lessens, it is likely that fewer longshoremen will be needed. This could be counteracted to some extent, of course, if port coverage is increased and increased foreign-to-foreign cargo is transshipped at American ports.

47. *MEBA and MMP* supply the licensed officers and engineers for both Sea-Land and USL, and to that limited extent, would not be affected by the merger. There is some slight indication, however, that if the merger is approved Sea-Land would cut back on its own replacement program, which could mean a reduction in the number of ships in the combined fleet, bearing in mind that Sea-Land intends in the not too distant future to rid itself of a number of older ships. If this chain of events takes place, it could result in a decrease in the use of MEBA and MMP personnel. This would be true even though the merger technically is not between Sea-Land and USL. But a fair and reason-

able appraisal of the entire record leads to the probability that the premise is not true even though, as one of Sea-Land's principal witnesses testified, "it would obviously be a tremendous advantage to Sea-Land to be rid of USL." Furthermore, it is possible that at the end of the charter period USL will have enlarged its fleet—perhaps by as many as 20 vessels.

48. *NMU* unlicensed personnel man USL's vessels, container and breakbulk. To allay any fears that the union might have if the merger is approved, Reynolds and Sea-Land agree that USL would be bound by all collective bargaining agreements in effect at the time of change of ownership, and that under the charter USL would continue to operate its containerships with NMU personnel. These conditions are also acceptable to Kidde and USL.

49. *Seafarers International Union* furnishes the unlicensed personnel for Sea-Land vessels. It is informally agreed by Reynolds and the union that the latter's members would not lose any of their traditional work under the merger and charter agreements, and that there would be no jurisdictional disputes in the manning of the two fleets.

50. *Shoreside personnel* of Sea-Land and USL is another factor to consider. USL already has reduced its personnel considerably, a situation which naturally concerns the rest of the organization under the proposed merger. It cannot be determined at this time what the real effect would be on USL personnel if the merger is approved—or, for that matter, whether USL would be forced to further reduce its

clerical force if the merger is not approved (but see later the discussion as to USL's financial condition and general competency of USL's operations). One thing can be said, however: any USL employee who might be released would have, under the Reynolds corporate policy, a preference for employment at Sea-Land or other Reynolds subsidiaries. In that connection, Sea-Land has plans in the next few years for a "rather substantial increase in people." The charter agreement provides that USL personnel in the Far East would be retained by Sea-Land.

Container capacity and containerable cargo by 1974

51. The parties have centered their thoughts on the year 1974 as the outermost period for comparative purposes, both as to container capacity and as to the volume of containerable cargo. In that year, Sea-Land may well have been on its way toward completion of its expansion program, as outlined in the five-year forecast (1971-1975) of McLean Industries, Inc. Also, much if not all of the building by foreign-flag lines will have been put into service by that time.

52. *Container capacity.* The predictions of the economic witness for Sea-Land and USL as to containership capacity by 1974, on the principal trade routes here involved, is shown in Table 1.

TABLE 1

Trade Route	No. of ships		Annual voyages		Annual capacity one way 20-ft. cont. equivs	
	U. S.	Foreign	U. S.	Foreign	U. S.	Foreign
5-7-8-9	11*	35	208	494	246,190	496,1
	9**		169		205,409	
10	11*	8	152	104	189,058	66,3
	14**		178		186,423	
12	14*	18	86	100	67,576	95,0
	12**		78		79,768	
29	50*	33	435	269	387,654	184,2
	33**		323		316,084	

* No merger
** Merger

53. In comparison with Table 1, the economic witness for APL-AML predicts the container capacity by 1974 as shown in Table 2.

TABLE 2

Trade Route	No. of ships		Annual voyages		Annual capacity one way 20-ft. cont. equivs	
	U. S.	Foreign	U. S.	Foreign	U. S.	Foreign
5-7-8-9	19*	28	253	416	339,438	392,7
	11**		221		312,317	
10	11*	8	156	100	135,622	63,5
	14**		182		132,987	
12	19*	7	110	52	86,461	89,4
	19**		117		95,741	
29	47*	21	443	231	406,745	177,1
	40**		376		339,111	

* Without merger
** With merger

54. Because of the differences in the basic approaches of the respective witnesses, the answer to the container capacity by 1974 probably lies somewhere between the extremes shown in the two tables; however, in view of such faraway estimates, complete accuracy is neither required nor expected for present purposes.

55. *Containerable cargo.* In Docket No. 69-56 the economic witness for some of the lines opposing the Sea-Land/USL charter estimated the volume of containerable cargo by 1974 on the trade routes here principally involved. These estimates were based on a review of liner cargo movements for which data was then available through 1968. Since the time of that estimate the actual data for 1969 have become available. These confirm, says the witness, the accuracy of the projections made in No. 69-56. The economic witness for Sea-Land USL also has made a similar computation in the present proceeding. The two estimates are shown in Table 3 (the figures are approximate).

TABLE 3

Trade Route	*Opposing Merger*	*Sea-Land/USL*
5-7-8-9	4,174,000	4,869,000
10	2,205,000	2,128,000
12	3,498,000	3,688,000
29	4,075,000	6,870,000

56. There is relatively little difference between the two projections except for Route 29. The reasonable estimate for that route is somewhere between the two extremes.

Containerable cargo vis-a-vis capacity, 1974

57. Table 4 shows the estimated containerable cargo and container capacity on the principal routes in 1974.[15]

TABLE 4

Trade Route	*Containerable cargo (long tons, approximate)*	*Container capacity (long tons, approximate); eight tons per container, average*	
		Total	*U. S.*
5-7-8-9	4,500,000	5,800,000* 5,600,000**	2,700,000* 2,450,000**
10	2,200,000	1,550,000* 1,550,000**	1,000,000* 1,000,000**
12	3,500,000	1,400,000* 1,450,000**	700,000* 725,000**
29	5,500,000	4,600,000* 4,100,000**	3,000,000* 2,500,000**
Total	15,700,000	13,350,000* 12,700,000**	7,400,000* 6,675,000**

* No merger
** Merger

58. From Table 4, the figures in which are, naturally, quite fluid since they represent estimates three years hence, it can be seen that only Route 5-7-8-9 would be overtonnaged in 1974 if the combined U. S. and foreign capacities are considered. Insofar as U. S.-flag totals are concerned, the capacity would be considerably below the available cargo on

[15] The cargo figures are a reasonable compromise between those given in Table 3.

Route 5-7-8-9, about half on Route 10, far below on Route 12, and respectable on Route 29. The total capacity on the four routes would be approximately 85 percent of the containerable cargo available in 1974.[16]

Discussion and Conclusions

Jurisdiction

Merger agreement. As might reasonably be expected, the Department of Justice (Justice) takes the position that the Commission has no jurisdiction under section 15 to entertain applications for approval of ocean-carrier mergers. The Examiner feels that he need not go into this phase in depth as he is bound by prior rulings that the Commission *does* have such jurisdiction. *Merger—American Mail Line and Pacific Far East Line*, 11 F.M.C. 53 (1967), aff'd *sub nom Matson Navigation Co.* v. *Federal Maritime Com'n*, 405 F. 2d 796 (9th Cir., 1968); *Agreement No. 8555*, 7 F.M.C. 125 (1962); and denial by the Commission of motion to stay the present proceeding, served February 17, 1971. With due respect, the Examiner, under all the circumstances, declines to be bound by the opinion of the United States District Court for the District of New Jersey, filed April 7, 1971, in *United States of America* v. *R. J. Reynolds Tobacco Company et al.*, Civil Action No. 1668-70, which held that the Commission does not have jurisdiction under section 15 to pass upon the instant application. As of this writing, the

[16] The Examiner is not unaware of statements made publicly in the past few months that certain trades either are or will be overtonnaged. He can only say that if the figures here used do not coincide with those of others, he is bound by what this record shows.

Commission has not been ordered by the Court to refrain from the further processing of the matter (see Commission's denial of appeal, served May 17, 1971).[17]

Supplemental agreement. As previously stated, the supplemental agreement comes into play only if the merger is disapproved, or approved on terms and conditions not acceptable to Reynolds.

Reynolds/Sea-Land and Kidde/USL take the position that the supplemental agreement is not subject to approval under section 15, for the following reasons: first, it is not an agreement between common carriers by water or other persons subject to the Act; second, it does not control, regulate, prevent, or destroy competition; and third, it does not fit into any of the other kinds of agreements contemplated by section 15. Justice supports this view.

APL and AML maintain that the supplemental agreement is subject to section 15 because it has a "shipping effect," irrespective of the fact that the parents of Sea-Land and USL, signatories thereto, are neither common carriers nor other persons subject to the Act. They further argue that the supplemental agreement has been carried out without the requisite approval. Hearing Counsel concede that Reynolds and Kidde are not common carriers or other persons subject to the Act, as traditionally understood, but insist that the real parties to the supplemental agreement are Sea-Land and USL, and that all agreements controlling, regulating, or destroying competition must be filed for

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[17] Jurisdiction is not defeated simply because some of the parties to the agreement are not carriers or other persons subject to the Act. *N. Atlantic Mediterranean Frt. Conf. and United Arab Co.*, 9 F.M.C. 431, 436 (1966).

approval, whether they be made directly by carriers or other persons subject to the Act or through the interposition of other parties having effective control over the carriers or other persons involved. Hearing Counsel further argues that the approvability of the supplemental agreement is premature since it has not been filed as an agreement requiring Commission action.

Whether the supplemental agreement is subject to section 15 is a close question; one which can be argued with equal facility on both sides. In approaching the problem the following, among other factors which probably could be mustered, must be considered: (1) the supplemental agreement cannot be implemented, in some respects, except through the action of USL under Kidde's orders; (2) Reynolds' primary consideration is to secure the USL fleet for the use of its subsidiary, Sea-Land; (3) the supplemental agreement is a means by which Reynolds—and more importantly, Sea-Land—could acquire USL (and all that goes with it) upon disapproval of the merger; (4) the supplemental agreement (section 14) provides that "This Agreement, the Merger Agreement, and the Related Documents embody the entire agreement and understanding between all of the parties hereto relating to the subject matter hereof"; (5) Reynolds has been actively behind Sea-Land's operations, including its building program; (6) Reynolds and Kidde have undertaken considerable financial and managerial responsibilities on behalf of their subsidiaries; (7) Reynolds has certain veto powers over the sale of USL; (8) according to witness McLean, Reynolds would expect to be heard should USL be disposed of by an institution selected by Reynolds; and (9) USL would continue to

be an operating entity to the extent it would not be materially disadvantageous to Reynolds.

Much could be said for the contention that the supplemental agreement is part and parcel of, and inextricably interwoven with, the merger agreement, and that it would be unrealistic to hold that the supplemental agreement is not subject to section 15. This theory must depend, however, upon the further theory that, although signed neither by carriers nor by other persons subject to the Act, nevertheless the document really has been executed by Reynolds and Kidde as the alter egos of Sea-Land and USL. This position would, of course, take care of any situation where legal parents or other relatives execute documents or perform acts permitting carriers or other persons subject to the Act to escape the responsibilities cast upon them by the Act. Whereas this would fit neatly into the general scheme of regulation, the Examiner is of the opinion that it stretches the skein too far under the facts here involved.

The fact that an agreement has a "shipping effect" does not mean necessarily that it automatically comes within the purview of section 15. Although Sea-Land and USL would be affected to some extent by the supplemental agreement, they are not the real parties in interest thereunder. Should the merger not be approved the supplemental agreement comes into full bloom, the charter application is abandoned, and Reynolds/Sea-Land terminate their interest in USL.[18] [19]

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[18] The Examiner's decision in *Agreement No. DC-27*, 10 SRR 725, 727 (1968), cited by the parties, has been considered but is not persuasive in view of the dissimilarity of facts.

[19] Should the Commission disagree with this conclusion, the discussion found in APPENDIX "A" is submitted as an aid to the Commission in its determination as to whether the supplemental agreement should be approved.

Promissory note. Although the order of investigation calls for a review of the promissory note, both as the Commission's jurisdiction thereof and as to whether approval should be given thereto, there is a dearth of briefing on the jurisdictional point. Kidde-USL merely give a short summary of the terms of the note and then state later, in bold type: THE SUPPLEMENTAL AGREEMENT AND THE PROMISSORY NOTE ARE NOT SECTION 15 AGREEMENTS. There is no discussion as to whether the note comes within section 15. Justice states that the note does not fall within section 15 as Reynolds and Kidde are not common carriers, that it is not a working agreement of the type covered by section 15, and that it is not related to the operation of shipping companies; on the contrary it is a contract creating "rights and obligations between two parties not subject to FMC jurisdiction in the event that the Agreement of Merger is frustrated by agency or court disapproval." Finally, Hearing Counsel states simply that the note "raises no legal issues other than those discussed in connection with the Merger Agreement and the Supplemental Agreement."

If the premise is correct—namely, that the supplemental agreement is not subject to section 15—it follows that the promissory note is not subject to section 15, and it is so found.[20]

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[20] Should the Commission disagree with this conclusion, the discussion found in APPENDIX "B" is submitted as an aid to the Commission in its determination as to whether the amount of the note is fair and reasonable.

Impact of merger on U. S. competitors

APL-AML. These two companies, which have served the the transpacific trade for some years, and which have close relationships with their shippers, both in the United States and in the Orient, are troubled by the thought that the merger could blanket their spheres of operation. This could be accomplished, it is said, by deploying six to eight SL-7's or eight Lancers in the various segments of the Pacific coast/Far East trade. Both lines have been and still are proceeding with their expanded containership program, a costly step which they would hardly take were they too much concerned with the approval of the merger. Referring to tables 1 and 2, and irrespective of whose estimates are used, APL, AML, Sea-Land, and USL agree that there will be fewer U. S.-flag containerships on Route 29 in 1974 if the merger is approved.

It cannot be overlooked that APL and AML have elected to accept operating differential subsidies, which contain them somewhat as far as concerns their independent flexibility and maneuverability.

If the merger is approved, Sea-Land and USL will accept the following conditions relating to Route 29:

> * * * two sailings per week originating and terminating on the West Coast of the United States (but only one sailing per week if the entire service is performed by SL-7 class vessels).

APL-AML are not satisfied with these conditions. They say that (1) Sea-Land offers no substantial outbound commercial service on Route 29; (2) USL has only a top-

off service on the Pacific coast in its Route 12 service (Atlantic/Far East); (3) the proposal would allow two sailings a week, plus a maximum of two calls a week by Route 12 vessels; and (4) though Sea-Land now offers two inbound commercial sailings a week with vessels that sail outbound with military cargo, the proposal would leave the military service unrestricted and add two round-voyage commercial sailings a week. This situation, they argue, would sanction from three to six times the sailings and capacity of its largest competitor.

APL-AML want the Route 12 sailings from the Atlantic to be confined to the basic route and not be used to double the two-sailings-a-week limitation on Route 29. They will accept two sailings a week "in the thought that it is probably coming anyway," but will "not accept the added service of the returning military carriers, which at the present level would double the inbound commercial service on T R 29." Since, it is stated, "the ordinary practice of the full-military carriers, such as States Marine, is to ballast inbound * * * Sea-Land should do the same if it wants to continue as the dominant military carrier in the Pacific while also maintaining the largest commercial service in the Pacific."

Limitation II, proposed by Reynolds and as here pertinent, is as follows:

> * * * Reynolds' subsidiaries shall average in any given year (computed from the date of consummation of Agreement 9827-1 through the 364th day thereafter) no more than the number of weekly round commercial containership sailings ("round commercial containership sailings" shall not include sailings where either the outbound or the inbound

> portion thereof is devoted 90% or more—by measurement tons—to the carriage of Department of Defense or other Government impelled cargo) designated in the four trade areas noted below.

There would be no opposition by APL-AML to the merger if (1) the foregoing provision is amended to read as follows:

> * * * Reynolds' subsidiaries shall average in any given year (computed from the date of consummation of Agreement 9827-1 through the 364th day thereafter) no more than the number of weekly commercial containership sailings in either direction designated in the four trade routes noted below.

(2) the description of Route 12 were amended to preclude calls at Pacific coast ports, and (3) condition E, here quoted, were amended to add at the end the words "after hearing"—

> * * * the 14 Challenger class vessels owned by USL shall not be transferred to Sea-Land or converted into containerships without prior application to, and approval by, the Commission.

These suggestions by APL-AML seem a small price to pay by Reynolds for transpacific operations after the merger, particularly since Limitation II provides that Sea-Land may re-apply to the Commission, on and after January 1, 1974, "to either abolish or modify the sailing limitations set out hereinabove on a permanent basis."

AEIL. This carrier is awed by what the size of Sea-Land would be if the merger is approved, and believes that approval would allow Sea-Land to blanket sailings and

arrivals, particularly in the North Atlantic trade. Especially is it worried by the possible diversion through Canada of cargo originating in such States as Illinois, Michigan, Wisconsin, and Minnesota, which could be handled by Sea-Land's proposed service via Halifax on the two Matson vessels and one USL Mariner vessel. From this area, in 1970, AEIL obtained cargo which accounted for 17½ percent of its outbound house-to-house container traffic. Furthermore, there is concern lest its cargo moving from the southeast and the Rocky Mountain areas, destined for its Norfolk-based vessels, be lost to Sea-Land because of the latter's additional direct Baltimore-Norfolk North Atlantic service with three USL Mariners. The southeast quadrant accounted for 29 percent of AEIL's outbound house-to-house North Atlantic container traffic in 1970. There is a positive feeling by the carrier that even its latest-built vessels and those recently acquired are now and will be too slow to offer effective competition.

The results of the Sea-Land service just mentioned, according to AEIL, would result in severe competitive inroads at its European ports of call which Sea-Land would not serve directly without the merger. Thus, each of Sea-Land's three new weekly services would call at and blanket AEIL's once-weekly service at Felixstowe, England, and would affect its service to Le Havre, France.

It is pointed out by AEIL that in No. 69-56 the evidence showed that Sea-Land's revenue projections for 1974, for the charter service, would attain the magnitude on Route 5-7-8-9 of 87 percent of the total potential realistically obtainable by all containership operators, U. S. and foreign, and that under its projected deployment in 1974,

under the merger, it would have over 30 percent more annual capacity than under the charter. Under these circumstances, it is concluded, AEIL would be destroyed.

In spite of its pessimism, AEIL has committed itself to new construction and acquisitions. Another development should blunt somewhat the fears of the company. It is common knowledge in the shipping industry that the containership operators in the North Atlantic trade are working on an agreement to pool revenues. As soon as the matter comes to fruition the agreement will be submitted to the Commission for its approval. As understood by the Examiner, U. S.-flag operators will receive 55 percent of the revenues. The Examiner feels, under the circumstances, that he can afford to be optimistic that the proposal, if approved, would have a very stabilizing effect upon AEIL's position. Another encouraging angle is the fact that Sea-Land and Reynolds, if the merger is approved are receptive to a maximum of three sailings a week on Route 5-7-8-9, as contrasted with four weekly sailings presently offered by Sea-Land and USL.[21]

Under all the circumstances, it is concluded that the merger would not be unduly harmful to AEIL on Route 5-7-8-9. Especially is this true since the responsible witness for Reynolds stated that the merger would not be used as an instrument to take unfair advantage of U. S.-flag competitors. If these assurances should prove unreliable, the Commission has plenary authority to intervene.

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[21] See, however, the first paragraph under heading "Diversification of direct service", page [65a] hereof.

In the Mediterranean trade (Route 10), the traditionally operating area for AEIL, Sea-Land admittedly has found the going pretty rough, and as stated earlier, presently is using foreign-flag vessels in that service. As in the case of the North Atlantic, AEIL fears that the merger would enable Sea-Land to blanket the area, to AEIL's detriment, since there is little cargo subject to diversion from the breakbulk and foreign containerships. On this route, U. S.-flag preference cargo accounts for about 40 percent of AEIL's carriage and military cargo produces 30 percent of its revenue. It is stated by AEIL that Sea-Land's low bid enabled it to start service on this route with an immediate base of 75 percent of its eastbound Mediterranean capacity, and that Sea-Land's ability under the merger to absorb increasing levels of military cargo would threaten AEIL's "viability" since such cargo is essential to an economically feasible U. S.-flag service on the route. As previously noted, Prudential-Grace, a subsidized operator, is acquiring a fleet of LASH-type vessels for its Mediterranean service.

AEIL's three Bath containerships, scheduled for delivery in 1973, are destined for use on Route 10 with the present Sea-Bridge vessels, making seven of the ten existing or projected containerships for operation on this route. Sea-Land's plan to use four USL Mariners on the route in 1974 under the proposed charter would have earned Sea-Land 41 percent of the potential revenues available to containership operators, says AEIL, and the revenue left to the latter would be small because foreign lines would not be affected by the merger and because a substantial portion would not be realized by a containership carrier since not all potential containerable cargo would move in containers.

Here again, however, AEIL should not be too much concerned since Reynolds agrees—although unwillingly—to limit the sailings of its subsidiaries to one a week on Route 10 if the merger is approved.

AEIL also is concerned lest USL's 14 Challengers, under the merger, might be used as competition on Route 18 (Atlantic and Gulf/India, Persian Gulf, and Red Sea), or converted to containerships for use in other trades served by AEIL. Neither the merger agreement nor the charter agreement provides for the use of these vessels by or for Sea-Land, and Reynolds does not intend to authorize a lease or transfer of them to Sea-Land. Furthermore, Reynolds has agreed that the Challengers will not be transferred to Sea-Land or converted into containerships without prior application to, and approval by, the Commission (see discussion heretofor as to the APL-AML suggestion that there should be no Commission action until after a hearing).

Seatrain. As already observed, Seatrain, an American company, is building large containerships abroad for operation under foreign flag (two already are in service). At the same time, it has applied for construction aid on at least one vessel to be built in its shipbuilding facility at the former Brooklyn Navy Yard. This hot-and-cold practice is not a very edifying spectacle, and very little consideration should be given to the future of the company's position in the North Atlantic containership competition should the merger be approved. In any case, any possible harm to the company in that area certainly would be tempered by the proposed pooling agreement and the agreement of Sea-Land to confine itself to three sailings a week in that trade, both already mentioned. Seatrain does not serve the transpacific trade

but is "considering" such a service; in spite of this, its general complaint and fear of the merger covers this trade as well. At this point, then, the discussion of the effect of the merger on Seatrain will be directed to the company's domestic services, in which areas it has a more palatable standing.

As already seen, Seatrain has domestic containership services in the Atlantic/Puerto Rico, west coast/Hawaii, and Guam trades. Although it states that the domestic trades are overtonnaged, Seatrain has no intercoastal or coastwise services. In the Atlantic/Puerto Rico trade Sea-Land's southbound carryings are about 60 percent of the total; northbound, about 75 percent. Sea-Land does not have a great deal of competition in the coastwise, Alaska, or Gulf/Puerto Rico trades. USL has a faster intercoastal service. It is contended by Seatrain that dominance of the domestic trades affects the foreign trade because a domestic service frequently feeds traffic in a carrier's foreign operation, which ties the shipper to one carrier; furthermore, the domestic service acts as a reserve fleet for deployment as the competitive situation demands.

Seatrain argues that Sea-Land should be prohibited from transferring into the domestic trades its vessels which would be released from the foreign trades if the merger is approved. In the absence of Seatrain witnesses (although in the early stages of the proceeding Seatrain's counsel stated that there would be witnesses), there has been no real opportunity to probe the effect on that company's domestic services if the merger is approved. That the other domestic operators have not intervened or otherwise expressed opposition to the merger would seem to indicate no

real fear on their part that the merger would be injurious to them.

Impact of merger on foreign competitors

As already seen, there has been a rapid growth of containership consortia among the foreign-flag lines in the North Atlantic and transpacific trades. Each member of the Japanese consortia builds, owns, and operates its vessels, and in spite of joint scheduling to eliminate duplication of sailings, each line is free to compete for cargo for its own vessels or to fill space chartered on the vessels of the other members. This increases competition. Although the foreign-flag containership competition in the Atlantic/Far East trade is presently of little moment, this will change drastically by 1972, when five Japanese lines, in a consortium, will enter the trade with probably seven large and fast containerships offering a weekly service. Furthermore, there is some talk of an agreement among one or more Japanese lines and English and/or West German operators.

It is interesting to note that no foreign-flag containership operator (with the exception of Seatrain, whose peculiar situation already has been mentioned) contests the merger. There is another angle to consider at this point, however. By 1974 Sea-Land alone will have about twice the capacity on Route 5-7-8-9 and three times the capacity on Route 29 of the largest consortium serving those areas. This might stimulate the consortia to further growth (see more on this later on herein). Based upon the statistics reproduced above, and bearing in mind his many years in the regulation of ocean transportation, it is extremely difficult for the Examiner to believe that the merger would have any ap-

preciable effect on foreign-flag containership competition, except, as stated, a possible incentive for the foreign interests to step up their competition.

Impact of merger on breakbulk movement

Sea-Land claims that the merger would enable it to attract cargoes now carried by foreign-flag lines, particularly breakbulk operators. Shippers generally prefer containerization over breakbulk because of the expanding idea of door-to-door service, speed, and a reduction in damage and pilferage.

Routes 5-7-8-9 and 29 have the heaviest movements of containerized cargo. Containerable cargo on those routes is in the general area of 75 percent of the total. For the last six months of 1969, 41 percent of the total cargo on those routes was containerized. On 5-7-8-9 the effect of containerization of U. S.-flag breakbulk operators has been very telling, to such extent that this type of service is almost a thing of the past (finding no. 18). The total volume handled by U. S.-flag breakbulk operators on the route decreased from 680,000 tons in 1968 to 33,000 tons in 1969. At the same time, the volume moving on foreign-flag breakbulk ships increased by 15 percent. As earlier mentioned, a substantial amount of Mediterranean cargo goes on breakbulk vessels because of the relatively underdeveloped economy of the area.

The Maritime Administration reports that at least 70 recently built vessels or scheduled for 1972 delivery will be fitted to handle containers as well as breakbulk cargo. The new LASH and Seabee vessels are capable of handling both types of cargo. AEIL's official recognized that there may be a reasonable future for his company with semi-

containerships, basically breakbulk. RJI's witness sees no commercial trade which could be profitable for USL's completely breakbulk Challengers. USL probably is correct when it says that it is not possible to foresee, with accuracy, the lengths to which changes and improvements in ocean transportation will go, and what will be the "future interface between breakbulk, container and LASH systems."

It is generally agreed that the expansion of containerization has made sizeable inroads into the volume of breakbulk cargo which normally would move on conventional style ships. Whether, and to what extent, the merger would result in Sea-Land being able to penetrate the foreign-flag breakbulk competition is anyone's guess, but the Examiner ventures the thought that it will not be considerable, as far as this record shows. It would seem reasonably clear that a nucleus of breakbulk vessels is highly desirable for the national defense of this country. Unloading facilities may not be available or adequate for containerships in the early stages of an international emergency situation. If the merger would result in the weakening of the basic breakbulk reserve of vessels, that would be a high price to pay. Furthermore, much of the world is not yet prepared or equipped to handle containerships in peacetime, a fact which makes it all the more necessary to protect adequate breakbulk services.

Impact of merger on military movements

Seatrain maintains that one of the troubles with the merger is that it would permit the straddling of bids for military cargo, and that Seatrain would be faced with a

low bid and a high bid, which would enable the combined companies to obtain cargo at different rates, depending on the competitive situation. In other words, Sea-Land's capacity could be shifted between the two companies to meet the military's entire need. Furthermore, it is argued, Sea-Land's flexibility and fleet size would enable it to deploy its vessels wherever the military cargoes are available, to the detriment of other carriers. To forestall these possibilities, Seatrain suggests a requirement, if approval is given, that Sea-Land alone be permitted to bid for military cargo. Sea-Land does not address itself to this question in its reply brief.

APL-AML say that by 1974, and in view of its size and sailing frequency, Sea-Land, alone and without the merger, would be in a position to bid low and get virtually all the military cargo or bid in the middle ranges with reasonable assurance of cargo at the higher rate. These opponents of the merger point out that in the transpacific trade the inbound volume is considerably larger than the outbound, that the operator with substantial military cargo might have a balanced service, and that Sea-Land's plan to employ, under the American flag, the large and fast containerships now under construction abroad, is to qualify them for military cargo.

In view of the fact that Sea-Land is the only U. S.-flag carrier able to bid on Vietnam cargo (and has been awarded contracts) because it has cranes, a fleet of trucks, and a sizeable shore organization at destination, APL-AML contend that USL, which submitted a bid, would have had to abandon or severely curtail its other services in order to fulfill the contract; after merger, Sea-Land would

eliminate its only competitor. Some of the unions add that Sea-Land would be able to submit higher bids and be certain that it would be successful, with a possible increased cost to the Government.

Any present advantage to Sea-Land in being able to bid successfully for military cargo is the result of sheer size, and the company quite likely will continue to grow even without the merger. Advantages derived from size alone are not generally censurable, absent some legal violation. Merger with its largest competitor, however, might enable Sea-Land to further enhance its position at the expense of its competitors, a situation which should not be allowed in the absence of well-bottomed reasons. All the avowed separation following merger would not prevent an understanding of some kind between the two companies if it was desirable or expedient to have bids at different levels. Without some conditions attached thereto, the merger would put Sea-Land in a very favorable spot in bidding on military cargo.

Justification of the merger

Section 15 of the Act, as here pertinent, provides:

> The Commission shall by order, after notice and hearing, disapprove, cancel or modify any agreement * * * that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be contrary to the public interest, or to be in violation of this Act, and shall approve all other agreements * * *.

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Although this proceeding is not strictly antitrust in nature, nonetheless it has a strong anticompetitive flavor. In the words of Sea-Land's counsel, the elimination of competition between itself and USL "is the anticompetitive nut." He further says: "The jurisdictional question aside, all parties agree that approval hinges upon whether or not the anticompetitive effects in the negative cup of the *Svenska* scale are outweighed by public benefits, transportation needs, and/or valid regulatory purposes in the positive cup of the *Svenska* scale."

In *FMC* v. *Svenska Amerika Linien*, 390 U. S. 238, 245 (1966), the Supreme Court said that "once an antitrust violation is established, this alone will normally constitute substantial evidence that the agreement is 'contrary to the public interest', unless other evidence in the record fairly detracts from the weight of this factor." The Court quoted with approval the pronouncement of the Commission in the proceeding that proponents must "bring forth such facts as would demonstrate that the * * * [agreement] was required by serious transportation need, necessary to secure important public benefits or in furtherance of a valid regulatory purpose of the Shipping Act." 10 F.M.C. 45. The merger must therefore be tested in the light of *Svenska* and the Commission's declaration just quoted. The following discussion is not necessarily in the order of importance of the particular subject.

More effective vessel utilization. It is generally recognized that Sea-Land has made rapid and expansive strides in containership operation, so much so, and as previously noted, that it is the largest such operator in the world. Sea-Land is not quite satisfied, however, with the status quo, and

believes that the merger would make for a more effective utilization.

On an average round voyage in the North Atlantic trade USL handles about 400 more containers than Sea-Land; on an average transpacific eastbound voyage, about 200 more containers. Comparing the utilized capacities of the two lines in the transpacific trade, USL filled its larger vessels 96 percent at the commencement of the Sea-bridge service in 1970 as contrasted with 94 percent for Sea-Land with smaller ships that had commenced its service a year earlier.

In the North Atlantic trade Sea-Land and USL carried 88 percent of all U. S.-flag container cargo during the first half of 1969 and 55 percent of the total commercial container cargo. By 1974, after merger, the two companies would have 71 percent of all U. S.-flag container capacity and 36 percent of all-flag capacity.

It was estimated that during 1971 Sea-Land would carry 21 percent of the U. S.-flag container cargo without merger and 60 percent with the merger on Route 5-7-8-9; on Route 10, 26 percent without the merger and 35 percent with the merger; on Route 12, no cargo without the merger and 100 percent with the merger; on Route 29, 51 percent without the merger and 87 percent with the merger. In 1974, the estimates were as follows: Route 5-7-8-9, 29 percent without the merger and 66 percent with the merger; Route 10, 33 percent without the merger (data unavailable under the merger); Route 12, none without the merger and 59 percent with the merger; and Route 29, 41 percent without merger and 53 percent with the merger.

Sea-Land states in its brief that the "evidence overwhelmingly shows that, based on past performance, Sea-

Land will be able to increase the productivity of these vessels." This gratuitous assertion cannot be accepted at face value. The foregoing statistics present a good picture of the services of both Sea-Land and USL, but whereas the lines may think a better utilization of vessels would result from the merger, that would be a matter primarily for their benefit and does not satisfy the pronouncement of the Commission that an agreement such as this must be "required by serious transportation need, necessary to secure important public benefits."

New direct port services. Sea-Land suggests that the merger would permit new direct services between Europe and the ports of Houston, New Orleans, and Halifax, and between Asia and the ports of San Juan and Balboa. There is no evidence, however, that such new services are either needed or desired by shippers, importers, or ports, or that the suggested services would be superior to those now offered. Direct calls would be eliminated at Baltimore, Norfolk, and Los Angeles, now called by USL in its Seabridge service. And it must be recalled that Sea-Land has agreed to make one fewer call on Route 5-7-8-9 if the merger is approved.

It has not been shown that the possible direct services are "required by serious transportation need, necessary to secure important public benefits."

Diversification of direct service. It is contended that, through redeployment, Sea-Land would be able to reduce the number of direct sailings between such "over-directly" served places as New York, Rotterdam, Norfolk, Antwerp, and German and U. K. ports. It is all right to say that

sailings will be reduced, but that does not take into consideration the fact that Sea-Land's new large and fast containerships probably will wipe out any advantage to be gained by reduction in the number of sailings. This type of reduction would not, of course, redound to the benefit of the public; on the contrary, it would simply enable Sea-Land to use fewer ships.

Increased feeder and relay services. Sea-Land plans, under the merger, to redeploy its war-built fleet in strictly foreign-to-foreign and domestic-to-domestic ports, thus, it is urged, adding substantially to its relay and feeder system and improving the balance of payments of the United States. This would contemplate the tying of 20 U. S. ports into services reaching 12 European ports and 14 Asian ports.

The use of Sea-Land's older vessels for foreign-to-foreign trading has little relevance in a proceeding of this kind, and it is doubtful besides that this type of operation can be beneficial in any significant extent to the foreign commerce of the United States. No substantial reason has been given as to how it would assist in improving the balance of payments of the United States. Sea-Land admits that it now carries foreign-to-foreign container cargo and believes it has the capability to handle Europe/Far East cargo without regard to the charter or the merger.

As some of the unions point out, the proposal to use older vessels in foreign-to-foreign trading "is an admission that there is no crying need for this merger in American foreign commerce," and that this service would be primarily for the financial benefit of Sea-Land. Another

possible result would be the loss of jobs for American longshoremen and seagoing personnel; there is no indication as to whether the ships to be so used would continue to fly the U. S. flag or be transferred foreign. The Examiner already has stated that he is not particularly enamoured of the practice of American companies operating under foreign flags for convenience and cheaper cost; the present suggestion would be particularly unsavory if the vessels were transferred foreign, considering the fact that Sea-Land seeks to merge with its largest competitor, with possible adverse effects on other U. S. competitors. The proposal would not satisfy a serious transportation need and is not necessary to secure important public benefits.

The redeploying of some of its war-built ships following the merger, Sea-Land says, would: permit the expansion of its already highly efficient relay system to new ports, increase the frequency at ports presently served, and bring the benefit of container services to a wider range of commodities and shippers. But the record is convincing that USL itself has a well-working relay system, possibly more effective than that of Sea-Land, and designed to enable shippers "anywhere within the total network" to ship to "any other place within the overall service."

USL also has a door-to-door service that permits inland shippers in the United States, Europe, and Asia to deliver their goods to an inland consignee in those areas. One of Sea-Land's principal witnesses concedes that the Seabridge service of USL serves the same purpose as Sea-Land's relay system. The intercoastal service of USL is faster than that of Sea-Land, and Sea-Land recognizes it as

highly competitive. Even USL's Seabridge service, with more direct calls than Sea-Land, can reduce the number of relays necessary to move containers from the Far East to Europe. A customhouse broker in Baltimore was quite emphatic that Sea-Land's relay system, in his experience (and as gathered from shipping interests elsewhere), is uncertain and confusing. The only other cargo-connected witness, a shipper produced by Sea-Land on rebuttal, did not comment on this matter.

Sea-Land's deployment plan, without the merger, calls for relay service to those ports that Sea-Land now feels would be added by using some of its older vessels following consummation of the merger. That being so, Sea-Land would accomplish nothing more in that respect under the merger than what has already been contemplated without the merger. There thus appears to be no public need for the merger on that score, or that any benefit would result therefrom except possibly to Sea-Land itself. It is questionable, too, whether it would be fully practical for Sea-Land to interchange USL's 20-foot and 40-foot containers with its own standard 35-foot containers.

Additional domestic service. Overall, Sea-Land proposes to increase its domestic frequency by 27 percent and container availability by 63 percent.

(a) In the Atlantic/Puerto Rico trade it is well known that competition is severe, and a Sea-Land witness testified in No. 69-56 that his company had withdrawn vessels from the service late in 1969 because "it became obvious that we had too much space." In Docket No. 71-43, now in process of hearing, Seatrain's general traffic manager testified that in

the Puerto Rico trade "it is difficult to foresee any appreciable gain in cargo at this time."

(b) It is contemplated that the capacity in the South Atlantic/Puerto Rico trade will be more than doubled. There has been no showing that there is a pressing need for this step; on the other hand, some of this cargo may simply be lured away from other gateways. It seems reasonably clear that the merger would bring no needed improvement to this trade.

(c) A direct service will be started to Ponce. There is no evidence that this is so essential as to justify approval of the merger.

(d) Between the Gulf and Puerto Rico Sea-Land has a new service, contrary to its position in No. 69-56 that such a service could not start unless the charter was approved. There has been no showing that the merger would be of any particular benefit to this trade.

(e) A study sponsored by the Department of Commerce in 1970 showed that the service from the Pacific coast to Hawaii is "especially over-tonnaged." The Examiner has been quite familiar with this trade over the years and has watched the constant coming and going of new services, of various forms and types, and this record certainly does not support the need of expansion of service by Sea-Land at the expense of other carriers if the merger is approved.

(f) The intercoastal trade, as previously noted, is more satisfactorily served at present by USL than by Sea-Land. With or without merger, Sea-Land proposes to transfer to

this trade by 1973 six vessels from its Far East service. The evidence does not show that the intercoastal trade needs or would benefit by the merger. On the contrary, it is entirely possible that the trade would be harmed by the curtailment of USL's service.

(g) The east coast shuttle service of Sea-Land would be affected adversely by the merger in that there would be a net decrease of about 300 35-foot containers a week.

(h) With or without the merger, there will be no change in Sea-Land's Alaska, Texas/New York, and west coast shuttle services.

Cross trading. It is Sea-Land's thought that the merger would afford the opportunity to start a direct service between Halifax and Europe, and would present a greater opportunity to participate in cargo movements between Europe/Asia and Canada/Caribbean areas. This, in Sea-Land's nomenclature, is "cross-trading." The record does not show whether the Canada services would involve strictly foreign-to-foreign cargo or cargo originating in or destined to the United States, and using a Canadian port or ports as a gateway. If the latter, this would require a full-blown evaluation of the possible benefits to Sea-Land and/or shippers/consignees vis-a-vis the loss of such cargo to U. S.-flag competitors serving Atlantic or Gulf ports. This cannot be done on the present record.[22] To conclude, there is no worthwhile evidence that the suggestions of Sea-Land on the possibilities of cross-trading would in any positive way be required by a public need to be gained from the merger.

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[22] See the discussion, *supra*, on the Halifax question as it might affect AEIL.

Greater capacity and frequency, faster time. According to it, effectuation of the merger would mean that virtually every port now served by Sea-Land would receive a higher quality of service, either by more regular or more frequent calls, or in terms of faster vessels with greater capacity. This would enable the linking up of a given port with nearly every important port in the United States, Europe, and Asia in a competitive manner. Of the 720 port pairs served by Sea-Land, 527 (or 73 percent) are served by direct, one-relay, or two-relay services. In 1973, if the merger is approved, Sea-Land says that 898 out of 1040 port pairs (86 percent) would be served by such services.

There of course is another phase to be considered in analyzing Sea-Land's position. As pointed out by APL-AML, the merger would not be entirely serene insofar as full utilization of USL equipment—ships and containers—is concerned. To use Sea-Land's 35-foot containers on USL vessels, which handle 40-foot and 20-foot containers, probably would require revamping of USL vessels to some extent. The plugging of some cells to accommodate 35-foot containers would result in the loss of about 1/8 of underdeck capacity. Furthermore, Sea-Land's containers are 8 1/2 feet high as compared with 8 feet for USL. The difference in sizes caused Reynolds to lower by 20 percent its projected revenues to be received from USL. USL's Lancers would decrease in capacity from 1200 20-foot equivalents to 1122, and the Mariners from 929 to 851. On these calculations the overall loss in use would be about 1248 20-foot equivalents, or about the capacity of one Lancer.

The foregoing is not the whole story, however. For several years Sea-Land has been adding 40-foot containers to its inventory, principally for light-weight but higher-measurement cargo, at the same time recognizing that containers of the same size are not desirable or practical for all shippers and that there is a continuing trend away from port-to-port service to point-to-point service. Furthermore, the new European-built vessels of Sea-Land are designed to carry 40-foot as well as 35-foot containers. Instead of being eight feet high, however, they are nine feet six inches high. Whether this would make a significant difference when used on USL vessels does not appear of record, but presumably that would be the case. In any event, some of the possible difficulties and results interposed by the opponents of the merger, as pointed out in the paragraph next above, may not be as great as predicted. On the other hand, the difference in the height of the 40-foot containers might present more of a problem than supposed.

There is little if any evidence of real value to support Sea-Land's contention that the merger would provide faster service. USL's vessels would not increase their speed, and the ports standing to lose direct calls by the merger—such as Baltimore—would not be as well off as at present under separate operation.

Cost savings. Sea-Land/USL say that the merger would result in economies of nearly $24 million with respect to vessel equipment utilization and container yard operations; will have a tendency to permit decreases in rates; will weigh against future rate increases; better earnings will afford the companies the opportunity to deposit earnings for new

vessels to be constructed in American [yards]; there will be an American-flag operator capable of meeting the scope, frequency, and regularity of foreign-flag consortia; will contribute to the balance of payments of the United States; equipment as well as terminal and container operations will be cheaper; and lower-value and marginally containerable cargo will be carried economically at present rate levels.

(a) Although Sea-Land's witness stated that the cost per box on a Lancer or a Mariner is substantially less than the cost of one using war-built converted ships, the company admits that any such savings produced by the merger cannot be quantified, but concludes that this result is "axiomatic." When it is considered that Sea-Land plans to use its older vessels on other routes, the "axiomatic" argument loses much of its weight. The merger, in this respect, would not result in an ascertainable public benefit or solve a transportation need.

(b) A witness for Sea-Land estimated that the merger would produce savings of over half a million dollars annually to USL because of reduced interest expense, on the assumption that the interest rate upon renewal of notes would be 8 percent. Another witness stated that the banks were thinking in terms of a rate of 1½ percent over the prime rate if they agreed to renew on due date. Interest savings, by admission, however, would benefit only the stockholders of USL. Furthermore, whatever lower interest rate there might be would be illusory since USL would be operating no vessels to which the savings could be passed on. Whether USL, without the merger, could borrow money at less than 8 percent, is presently conjectural,

especially since the earnings of USL have taken a turn for the better (see later herein). Also, there is no assurance that USL, under the merger, could borrow from Reynolds at 6 percent—as suggested by Sea-Land—because this figure is less than that on any indebtedness of Sea-Land to Reynolds.

(c) There are estimated annual savings of $20 million on stevedoring expenses by reason of the merger. This comes about, says Sea-Land, from a comparison of the past performances of both carriers. The witness for Sea-Land, prior to preparing his comparison, did not discuss with anyone from USL the latter's stevedoring costs per container and did not know what expenses were included in USL's cost data. The USL data was prepared by the company's planning group and not by its financial department, the former being only one of the sources from which the latter draws its information. The president of USL believes that the planning group's projections are not wholly reliable. Sea-Land's witness is of the view that the USL figures for the latter's cost per container are too high.

There is an unwarranted assumption that Sea-Land will operate the USL vessels under the same deployment that USL contemplates without the merger. Whether stevedoring costs for USL vessels would be reduced by the merger cannot be told from the record. The evidence as to where and at what cost USL vessels would be serviced in the United States, following the merger, is hazy and generally unsatisfactory, as is the cost of handling mixes of 20-, 35-, and 40-foot containers. As previously seen, the whole question of how Sea-Land would cope with multi-

size containers is far from clear. Just how the conversion of USL vessels to accommodate 35-foot containers will be accomplished has not been shown, nor the cost thereof, or whether alleged stevedoring economies will be offset by such costs. Finally, in appraising the validity of the contention that the cost of handling containers decreases as the number of units increases, the evidence shows that, at the same Atlantic ports served by USL on two of its services, this premise is incorrect.

(d) Sea-Land estimates that the merger would result in a saving of about $1,000,000 a year in advertising. Based on USL's 1970 costs, the witness conceded that no account was taken of the fact that USL incurred high expenses in promoting the Seabridge service announced in August and commenced in September of that year. While he assumed that his company's budget would cover all USL vessels without added cost, he agreed that additional advertising would be necessary in the case of a Sea-Land Atlantic/Far East service.

It is reasonable to assume that *some* advertising expenses would or could be eliminated by reason of the merger, but the record does not show with any reasonable certitude what they would be; indeed, it would be difficult at this time to do so. In any case, the small saving would not, standing alone, be enough to justify approval of the merger.

(e) The witness for Sea-Land compared his company's past container space utilization with USL's own projected slot utilization, and estimated that an annual saving of over $2 million would accrue from the merger by virtue

of Sea-Land's better vessel utilization. This, of course, does not take into consideration the possibility of a different deployment by Sea-Land of USL's vessels under the merger. As already noted, *any* deployment plans, on a scale as large as here contemplated after merger, can be nothing more than well-intended guesses inasmuch as many things could warrant a change in Sea-Land's plans between approval date and the end of a reasonable period of trial and error. Again, there might well be problems arising from the various sizes of containers. This latter brings forward once more the fact that Sea-Land offered no positive plans for alterations to the configuration of USL vessels to suit the needs as well as convenience of Sea-Land.

What was said in connection with acknowledged possible savings in advertising expenses applies equally well to savings in vessel utilization, namely, *some* savings could very well follow the merger even though they cannot now be pinpointed. The subject is nebulous by its very nature. It can be said, however, that any such savings would be more for Sea-Land's benefit than to satisfy a public need.

(f) USL's president thinks the present rate structures are too low and sees no early prospect for decreases in rates after the merger. Reynolds' principal witness said that he has no plans to reduce rates. Sea-Land speaks of rate-level increases in 1971 and makes projections based on general rate increases of 5 percent a year for 1972-1975. A Sea-Land witness admitted that, while cost savings could not be translated at once into reduced rates directly benefiting the public, nevertheless, since such savings increase the return on investment, and since a carrier

having a satisfactory return has no incentive to increase rates, indirect benefit to the public would result. The logic of this view does not coincide entirely with the general history of business, which shows fairly conclusively that management ordinarily is not very mindful of the public interest.

Considering the available testimony, the hope that shippers might receive a rate break from the merger is quite dim.

(g) Proponents of the merger contend that cost savings resulting from the merger will permit the carriage of lower-value and marginally containerable commodities at present rate levels. Sea-Land has shown very little inclination to obtain low-rated cargo, even though its ships do not always run full, and one of its witnesses testified that much of this type of cargo would continue to be carried by breakbulk vessels. Based upon the fact that Sea-Land has given every indication that it is going to raise rates periodically for the next few years, it is hardly likely that it will seek low-rated cargo or that increased rates would attract low-value cargo.

Efficiency of USL. Since its entry into the field of containership operation just a short time ago, USL has become a very efficient and respected operator, with a strong following of shippers and importers, and its president is of the opinion that the competence and expertise of the company's managerial staff compare quite favorably with that of Sea-Land. Although he concedes that Sea-Land's marketing personnel, because of longer experience, may be better attuned to intermodal operations, this gap is expected to be

bridged in short order. Personnel is being added to increase the overall capability of the company. There is no denying that the company has been at a disadvantage to some extent by lack of terminal facilities at certain ports; the situation is rapidly improving and more and better equipment is being acquired. One of AEIL's top officials does not agree that Sea-Land's operations are more efficient than that of other U. S.-flag operators; the company simply has been in business longer. He is inclined to the thought that size and flexibility, not efficiency, are the crucial factors in the success of a competitor.

All in all, and considering the financial wringer through which it has been but now seems to have overcome to an appreciable extent (see elsewhere herein), there is no reason to believe that USL, with its long background, will not in time be as relatively efficient as Sea-Land, albeit on a more modest scale.

USL as a viable company. It is urged that under the merger USL will continue as a viable company. This position must be taken with a grain of salt. On the one hand it is maintained that USL will go on its merry way after the merger, buttressed by financial help from Reynolds, but on the other hand Reynolds let it be known at the hearing that if USL got in the competitive way of Sea-Land it would have to yield. Reynolds' witness did say that the company would accept as a condition to approval the requirement that USL be continued as a viable company. It is very doubtful, however, that it would be practical to police this type of situation to complete satisfaction of everyone, including the Commission. It does not seem, therefore, that the prospects for a viable USL would be too bright.

One of the reasons given in support of the merger is that it would assure that USL's container fleet "would be utilized by a carrier having the ability and competence to maximize the effectiveness of its participation in foreign and domestic commerce." It already has been mentioned that how this would come about is somewhat hazy in view of the possibility of countless changes made necessary through trial and error. As also noted, USL generally is considered to be a good and efficient operator.

There is the assertion by Sea-Land that the record shows that the only U.S.-flag operators opposing the merger "are interested only in maintaining their relative market share vis-a-vis other U.S.-flag operators." In addition, it is claimed that such lines do not seriously intend to compete with foreign-flag lines. As already seen from the data, the opponents, in their smaller way, *are* seriously trying to keep abreast of the foreign competition. The fact that they are also trying for a share of the U. S.-flag market takes nothing away from their efforts directed at foreign-flag competition.

Mention already has been made that USL, after termination of the hearing, took certain steps to improve its financial position. Recently, in the companion proceeding before the Interstate Commerce Commission (intercoastal operations), the president of USL said that the company was now operating in the black. Official notice is taken of the report in the Wall Street Journal of an interview with Kidde's chairman Sullivan, published on September 22, 1971, wherein he said, in part, as follows:

> * * * I think U. S. Lines is stronger than before. It is making a small profit. Most of the capital ex-

penditures needed for the next few years have already been made. And there are signs that there will be greater stability in the freight rates in the near future. Obviously, though, we don't want it back because of the earnings uncertainty, the high capital requirements and the specialized skill it requires.[23]

USL is now forging ahead but Kidde wants to rid itself of the child because the returns of the latter do not satisfy the financial requirements of the parent (this position is quite normal in the business world). It must not be overlooked, in appraising USL's difficulties, that the principal reasons for its money bind were the capital requirements involved in the new containerships, inability to obtain the vessels on time, and the nonresumption of operating differential subsidy. USL of course is not completely out of the financial woods; far from it. But it is hard to believe that one of America's oldest and best-known ocean common carriers, given what appears to be good leadership, plus the improvement in its resources, should be considered such a bad risk that the public would be benefited by merger with its largest competitor. Granted that the position of Reynolds is such that it could be of real assistance in helping USL to tide itself over the shortage of capital, all indications are that USL can and will eventually extricate itself from its present financial morass and remain a formidable —and therefore a highly desirable—competitor of Sea-Land.

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[23] In accordance with Rule 13(f), any party, upon timely request, will be afforded an opportunity to show the contrary.

Generation of new commerce. Sea-Land believes that the increased container capability brought about by the merger would stimulate "expanded marketing concepts by shippers through opening the accessibility and convenience of new world markets. The increased productivity of the combined U. S. Lines/Sea-Land fleet will give the shipping public ready access to a broad spectrum of markets which had not been considered in the past, resulting in the generation of new ocean commerce."

Since no studies have been made or economic facts presented, it cannot be known whether the rates to be structured by Sea-Land would be such as to induce new shippers to seek foreign markets, or whether the rates to be charged would produce enough revenue to justify the effort. There is no proof—indeed, it probably would be very difficult to prove—that the "maybe" results here proclaimed would offset the effect of removing a most important competitor from the field.

The argument of Sea-Land, while intriguing, is suppositive by nature and therefore not basically strong enough to support the conclusion that such efforts by Sea-Land in respect to possible new markets are "required by serious transportation need, necessary to secure important public benefits or in furtherance of a valid regulatory purpose."

The critical period/need of USL ships. One of the reasons Sea-Land is anxious to have the merger approved is the fear that foreign-flag competition will become so strong in 1971-1972 that traffic patterns will be set in such fashion as to cause Sea-Land to lose a large part of the market before its own superior European-built vessels are delivered and the Matson vessels which it purchased will be

ready. This general belief was shared by other witnesses, for and against the merger. It might be added that the new U. S.-flag vessels also would appear on the competitive scene.

About half of the so-called *"critical period" is gone and* Sea-Land appears not to have lost stature in the world-wide containership field. By the nature of the judicial process, most of the critical period will have elapsed before a final determination is made as to the approvability of the merger. In the meantime, Sea-Land's new vessels will be coming into the service, as will the two Matson vessels. One of Sea-Land's top officials admitted that the new high-speed European vessels would neutralize any competitive disadvantages that might otherwise accrue to the company during the "critical period." The president of USL admitted that shippers no longer blindly utilize particular carriers. The "critical period", if it were a valid argument at all, does not retain much of its vigor and might be likened to the subsidence of a hurricane.

As already pointed out, one of the possible reasons for the rapid development of foreign containership operation is the position attained by Sea-Land so quickly in world trade. Competition sometimes can get out of hand and thus defeat the very purpose for which it is intended. The fact that Sea-Land is building very large and fast containerships, plus the purchase of the two Matson ships (with the third a distinct possibility), plus the possible acquisition of USL, might be an incentive for further foreign-flag consortia. This kind of maritime merry-go-round might be injurious, in the long run, to the American merchant marine.

It can be appreciated that Sea-Land's position might be improved by the acquisition of USL's new vessels for at least partial replacement of Sea-Land's old vessel[s]. But the USL vessels will continue in the foreign trade without the merger. Sea-Land and Reynolds would be the principal beneficiaries from the turn-over to them of USL's fleet. Naturally, there might be *some* benefit to the public and/or the American merchant marine, but the degree thereof would not be to the extent necessary to satisfy the requirements of the *Svenska* doctrine and the Commission's guidelines.

Increased American shipbuilding. One of the arguments advanced by Sea-Land is that the proceeds (over $1 billion) from the charter of USL vessels [by] Sea-Land (No. 69-56) would enable USL to construct new American-flag vessels.[24] This would include specialty vessels for use in nonliner trades where about 98 percent of the service is furnished by foreign-flag vessels. USL's president believes this to be a good opportunity, as did his predecessor. It is said that the Alaska oil strike will call for vessels to transport oil and liquid natural gas. Sea-Land says that any future building by USL would not interfere with Sea-Land's construction plans.

There is no gainsaying that the above suggestion has some appeal, even though the thinking thereon has not been crystalized by Sea-Land and USL. Suffice it to say here that the argument will be put in the plus column when, at the end of this decision, a final determination is made as to whether the merger will be approved.

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[24] The Examiner feels that, under the order of investigation in the present proceeding, he is without authority to approve or disapprove the charter, albeit the two proceedings have an undoubted affinity.

Possible loss to USL, charter vis-a-vis merger

Item 10 of the order of investigation calls for an inquiry into the "possible loss of benefits from the maintenance of an independent USL which would have existed under the charter, but would not exist if the merger is effectuated."

USL claims that the merger would mean the continuation of the company as a viable, on-going shipping organization; that it is not possible to determine the precise fate of USL if the merger is not approved; that the funds received by USL under the charter would be invested in new ships; that, as a subsidiary of Reynolds, it would have access to the resources of Reynolds, which would mean stability and the ability to expand its shipping services; and that USL's fleet would be utilized by a carrier having the ability and competence to maximize the effectiveness of its participation in foreign and domestic commerce.

Each of the foregoing contentions already has been discussed, so there need be no repetition thereof at this point. The principal loss to USL from the merger would be the $1 billion charter hire over a 20-year period (if Sea-Land charters the vessels after approval of the merger, it would seem that USL would still lose its independence). This must be balanced against a free and unfettered USL if the charter is not approved, leaving the company as a first-class competitor of Sea-Land.

Valid regulatory purpose

Sea-Land is of the belief that disapproval of the merger "surely would guarantee the continued balkanization (with the accompanying vulnerability to the economic ups and

downs of the industry) of the American Merchant Marine." USL argues that approval "will assure the operation of an efficient and productive American-flag carrier in all the major foreign trades. This will, in turn, assure that America's best interests will be represented effectively by a substantial member of the international shipping conferences. This Agreement will enhance to some extent the Commission's ability to monitor and regulate the activities of all carriers serving the U. S. foreign commerce." It further says that the absence of strong American-flag competition would lessen the Commission's "voice" in the international shipping field; that foreign lines are rationalizing and improving their competitive positions, with no hindrance from their governments; and that unless American companies are permitted to do likewise, the Commission and the American merchant marine will lapse into secondary roles in this country's foreign commerce.

There is no indication that failure to approve the merger would have a pernicious effect on the American merchant marine. On the contrary, it would simply allow the American-flag containership operators to remain in a healthy competitive state. Nor are there substantive prospects that approval of the merger is needed to stiffen American-flag competition against foreign-flag services. To repeat what already has been noted, the merger might even stimulate further foreign-flag competition by consortia or otherwise. Furthermore, with Reynolds' backing, there certainly is no well-founded reason to believe that Sea-Land would be placed in a precarious position if the merger is disapproved.

Ultimate Conclusion

It is important to distinguish between the kind of proof necessary to justify approval of an ordinary run-of-the-mill agreement and the proof required for approval of an agreement with antitrust overtones and therefore possibly against the public interest. *Svenska*, and the Commission's decision there under review by the Supreme Court, point up the difference. Although it cannot be denied, as pointed out, that some of the arguments advanced in support of the merger may possibly have merit, within the guidelines set out by the Commission, most of the results claimed as favorable are in reality for the benefit of Sea-Land alone.

The single plausible ground for the merger is the protection of USL's financial stability. But a fair comparison of the company's recent troubles with its apparent renascence in that respect leads to the conclusion, in the Examiner's judgment, that USL has weathered its monetary crisis to the point where its independent position in the foreign commerce of the United States outweighs the desirability or necessity of its takeover by Reynolds.

The proceeding is discontinued.

/s/ C. W. ROBINSON
C. W. Robinson
Presiding Examiner

Washington, D. C.
October 21, 1971

Appendix "A"

Kidde/USL contend that the supplemental agreement does not violate any part of the Act, that its provisions would be beneficial to the shipping industry and the commerce of the United States, and that it would assure the continuation of USL as a strong competitor and a major factor in the shipping industry. Without it, they further maintain, Kidde would be obliged to again find a way to dispose of USL and Kidde might be forced to liquidate USL if it could not promptly find a buyer. They conclude that the agreement would relieve the pressure on all parties.

The supplemental agreement would permit Kidde and Reynolds to achieve what they would be denied if the merger is disapproved. Denial would place Reynolds in the driver's seat in determining the future of USL. It could choose any financial institution to find a purchaser, and McLean agrees that Sea-Land's voice would be heard in that connection. The agreement permits the disposal of USL by public auction of its assets, or sale of its stock, or by distribution of the stock to Reynolds' stockholders. Neither Reynolds nor Sea-Land could be prevented from bidding at any public auction or from purchasing USL's stock to protect the $65 million investment, a possibility which a Reynolds witness said would be seized upon, if lawful, inasmuch as Sea-Land would like the use of the USL ships. The agreement certainly contains the seeds of possible control, prevention, or destruction of competition. Furthermore, the agreement is primarily for the benefit of Kidde and Reynolds, not for the benefit of the public.

The supplemental agreement, as now composed, should be disapproved

Appendix "B"

In the nine years prior to its acquisition by Kidde, the value of USL in the open market was not in excess of 55 percent of book value. No responsible buyer other than Reynolds was found for USL by investment bankers, and the latter conveyed to Kidde the opinion that the underwriting and public sale of USL stock was well-nigh impossible because of poor market conditions and the poor operating results of the company.

During the discussions between Mr. Sullivan of Kidde and Mr. McMullen of USL, looking toward the sale of the company to the latter, the initial figure mentioned was approximately $50 million in cash, cash equivalents, and notes, plus delivery to Kidde of 816,000 shares of Kidde stock. This general basis was carried forward in the meetings between Mr. Sullivan and Mr. McLean. The final consideration was $65 million, with no stock transfer. Kidde was advised by a financial analyst specializing in the maritime industry that the price was just, reasonable, and prudent.

Whereas Mr. McMullen, when testifying, declared that the value of USL, an organization close to his heart, was worth considerably more than the price agreed upon, the financial facts of life cannot be ignored—actual market value had to prevail over possible value were the company one of sound financial standing at the time the agreement was made.

Report of the Federal Maritime Commission

Discussion and Conclusion

The opponents to the agreements under consideration in both proceedings have consistently argued that approval of either the charter or merger agreements would produce overwhelming competitive advantages to Sea-Land and a disastrous effect upon the U.S.-flag competitors. Most of the opponents did not file exceptions to the Examiner's decision in the Charter case principally because Commission affirmation of the Chief Administrative Law Judge's decision in the Merger Case (wherein he determined it should not be approved) would operate as a simultaneous termination of Charter Agreement.[A7] On the other hand, some of the opponents viewed the decision in the Merger Case as correct in its conclusions; but argued that it should have included a stronger antitrust case; that it failed to

[A7] Article 6.3 of the proposed merger agreement provides:

> 6.3 The parties hereto agree that (a) if this Agreement or the Merger is disapproved, or approved on terms and conditions not acceptable to Reynolds and Reynolds shall have so notified Kidde, this Agreement, the Basic Agreement, the Time Charter and the Equipment Lease (the "Related Documents") shall be automatically cancelled but the Supplemental Agreement shall remain in full force and effect; and (b) if this Agreement and the Merger are approved on terms and conditions acceptable to Reynolds but the Basic Agreement, the Time Charter or the Equipment Lease are disapproved, such disapproved instrument shall be automatically cancelled or if any such instrument is approved on terms or conditions unacceptable to Reynolds and Reynolds shall have so notified Kidde, this Agreement shall remain in effect but the Basic Agreement, Time Charter or the Equipment Lease (as defined in the Basic Agreement) or whichever of them is approved on terms unacceptable to Reynolds, as the case may be, shall be automatically cancelled unless under the terms of any of the Required Approvals such cancellation would adversely affect the approval of this Agreement or the Merger, but the Supplemental Agreement shall remain in full force and effect.

appreciate the full impact of the merger upon the competitors, and that the decision that the supplemental agreement and the promissory note are not subject to section 15 was wrong. The proponents of the agreements are in accord with the conclusions that the merger agreement falls within the purview of section 15 and that the supplemental agreement and promissory note do not. They except to the Chief Administrative Law Judge's conclusion that the merger should be disapproved and the suggestion that, if the supplemental agreement is within section 15, the merger agreement, as now composed, should be disapproved.

1. JURISDICTION

The Chief Administrative Law Judge found jurisdiction in this case on the basis of Commission precedents. Continuing arguments as to the propriety of those precedents compels us to expand somewhat on their rationale.

As we said in an earlier report, the threshold issue here is "that of our jurisdiction over the agreement to merge."[A8] Judicial developments since our decision in the *AML* merger case make it necessary to treat the jurisdictional issue once again. Since the Court of Appeals for the Ninth Circuit upheld our finding of section 15 jurisdiction over

[A8] *Merger—American Mail Line, American President Lines and Pacific Far East Line*, 11 F.M.C. 53 (1967) (hereafter the *AML* case). See also the discussion of our jurisdiction contained in the Initial Decision of Chief Examiner Page in Docket No. 69-56. We agree with his well reasoned discussion and his application of legal principles. Accordingly, we will not repeat here the arguments thoroughly covered therein. (11 S.R.R. 759, 763-773) (1970).

"merger agreements"[A9] two other United States courts have considered the issue and reached the opposite conclusion. In *United States* v. *R. J. Reynolds Tobacco Company*, 325 F. Supp. 656 (U.S.D.C.N.J. 1971), Judge Garth concluded that all of the agreements alluded to in section 15 of the Shipping Act are of an "on-going" nature and that a "single discrete event" such as a merger is not within the intended coverage of section 15. In *Seatrain Lines, Inc,* v. *F.M.C.*, 460 F. 2d 932, 947 (D.C. Cir. 1972), the United States Court of Appeals for the District of Columbia Circuit found that the word "agreements" as used in section 15 "did not include 'mergers,' 'acquisitions' and like."[A10]

It is hardly necessary to say that we find ourselves aligned with the majority of the Ninth Circuit Court of Appeals in *Matson* and in respectful disagreement with Judge Garth in *Reynolds* and the D.C. Circuit Court of Appeals in the *Seatrain* case. That court, speaking through Judge Wilkey, considered the specific language of section 15; the language of contemporary statutes; the legislative history of the Shipping Act and the administrative and judicial construction of section 15 since its enactment and, as already noted, concluded that mergers are not within the ambit of the section.

For the discussion of those basic considerations which prompted us to find merger jurisdiction within the scope of section 15, we refer to our earlier report in the *AML* case (*supra*, note A8). We shall in this report confine ourselves to an application of that earlier discussion to those considerations which led Judge Garth and the court in *Sea-*

[A9] *Matson Navigation Co.* v. *F.M.C.*, 405 F. 2d 796 (9th Cir. 1968).

[A10] The FMC's petition for certiorari in *FMC* v. *Seatrain Line, et al.*, No. 71-1647, was granted by the Supreme Court on December 11, 1972.

train to conclude that jurisdiction over mergers is not to be found in section 15.

A. The Language of Section 15

Section 15 vests in the Commission jurisdiction over all "agreements":

1. fixing or regulating transportation rates or fares;
2. giving or receiving special rates, accommodations, or other special privileges or advantages;
3. controlling, regulating, preventing or destroying competition;
4. pooling or apportioning earnings, losses or traffic;
5. allotting ports or restricting or otherwise regulating the number and character of sailings between ports;
6. limiting or regulating in any way the volume or character of freight or passenger traffic to be carried;
7. or in any manner providing for an exclusive, preferential or cooperative working arrangement.

Under the provisions of the section, all such agreements must be filed with the Commission and the Commission is empowered to approve, disapprove, cancel or modify agreements filed with it, with all agreements approved by the Commission being exempted from the antitrust laws. From a literal reading of the third category, an agreement to merge would clearly seem embraced within its language, for what better way to work the destruction of competition than through a merger. The Court in *Seatrain*, while admitting this, nevertheless concluded that both the language and context of section 15 itself and the legislative history

accompanying it demonstrate that an agreement calling for the "single discrete event" (a merger) is not included among those agreements which "destroy competition."

This, of course, attaches to the word "agreement" a meaning distinctly different from that understood in common usage. However, this result is said to be dictated by the context of section 15 and the section's legislative history. To the court in *Seatrain*, the first six categories of agreements covered by section 15 of necessity imply the continued existence of the parties and their participation in such agreements over time (e.g., fixing or regulating rates; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting sailings between ports, etc.) (*Seatrain, supra*, at 934-935). We agree that the fixing of rates, the apportioning of earnings and the restriction of sailings presuppose operations over time; but the destruction of competition (that category with which we are here concerned) can be more readily accomplished by the single discrete event—the merger— than by an on-going agreement, and the inference that continuous operations are required in agreements destroying competition is not justifiable.

Inherent in the argument that our jurisdiction is restricted to agreements involving continuous operations is the assumption that the Commission labors under some disability not found in the Department of Justice or the courts should the need arise for a post-approval dissolution of a merger. Thus, the court in [*Seatrain*] concludes: "In the case of arrangements of a more permanent nature . . . the sale of all the assets of one common carrier by water to another, subsequent Commission cancellation or modifica-

tion of such a previously approved agreement would be very difficult if not impossible to implement." (*Seatrain, supra,* at 935) The relevance of this difficulty to the question of our jurisdiction, particularly if applied to the instant case, is obscure.

To begin with, there is nothing in the relevant statutes which in any way limits the manner in which the Commission may implement its disapproval of an agreement. Section 15 states that "The Commission shall by order . . . disapprove, cancel or modify any agreement . . . whether or not previously approved by it" that it finds violative of any of the standards set forth in that section. Consequently, there being no limitation on the latitude of the Commission's authority to disapprove, cancel or modify an approved agreement, there can be no justifiable restriction on the scope of approval agreements based upon the availability of an adequate remedy for violation of the approval. As we said in our earlier opinion in the *AML* case:

> We are necessarily given the power to stop or modify any continuing practice if we find that it has become detrimental to the commerce of the United States or contrary to the public interest even though we have previously approved the practice. But even here our disapproval or modification is only prospective; we cannot undo what has already been done. We are now concerned with the approval of a merger of three steamship lines, approval of which is to be granted unless we find that the merger would operate to the detriment of the commerce of the United States, be contrary to the public interest or unfair as between carriers; or otherwise in violation of the Shipping Act, 1916. It does not follow, of course, that our approval of the agreement once granted

> can never be withdrawn or that we cannot order the agreement modified.

The Supreme Court has specifically addressed itself to this point. In *California* v. *U.S.*, [320 U.S.] 577, 584 (1944) the Court said:[A11]

> Finding a wrong which it is duty-bound to remedy, the Maritime Commission * * * may, within the general framework of the Shipping Act, fashion the tools for doing so.

There is, therefore, no lack of authority in the Commission to devise the appropriate remedy for the situation in which the terms of a merger approval are violated; and because we can provide such a remedy, it is irrelevant whether there are "continuous" operations as defined by the court in *Seatrain*. Certainly, moreover, we cannot see how others may accomplish the same result with any less of the "difficulty" suggested by the *Seatrain* court.

Further, this case is sufficiently different from *Seatrain* to render the court's argument inapposite. First, there is a fundamental difference in the nature of the agreements for which approval was in *Seatrain* and is now sought. The *Seatrain* situation was described by the court as follows:

> This sale comprises all of Oceanic's assets, although Oceanic * * * retains, its corporate existence and is

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[A11] See also the *Matson* case, *supra*, note [A9], citing *Volkswagenwerk* v. *FMC*, 390 U.S. 261, 273-275a note 23 (1968); and *Pan American World Airways, Inc.* v. *U.S.*, 371 U.S. 296, 312, n.17 (1963).

> not restricted by the agreement from reentering the * * * trade.[A12]
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> * * *
>
> * * * the type of agreement here at issue [is] the acquisition of all the assets of one common carrier by water by another carrier. [A13]

The court then concluded that:

> * * * Section 15 does not provide for FMC jurisdiction over a sale of ships, absent either a provision limiting competition among the parties or a provision of some other type requiring continuing supervision.[A14]

Consequently, the court in *Seatrain* was concerned with an agreement very different from the proposed merger herein, and certainly from the agreement as modified and conditioned by us. The proposed agreement is a total merger of one carrier into the other. As modified and conditioned, the agreement we are approving (and as is discussed fully, *infra*) requires both the continued existence of USL (the acquired carrier) and the retention by USL of all its assets, thereby necessitating continuing Commission supervision to ensure that the approved anticompetitive activity remains within bounds of the enabling agreement.

The import of *Seatrain* is, therefore, that either a more anticompetitive agreement or one not finite as there at issue would be within the ambit of section 15. As the court said:

[A12] *Seatrain, supra*, at 933.

[A13] *Id.*, at 938.

[A14] *Id.*, at 945.

> Thus it is not * * * the complexity of the antitrust issues involved, which determines if the FMC has jurisdiction.[A15]

For example:

> * * * a * * * contract coupled with an agreement not to compete, which may involve more complicated antitrust issues than the more simple sale contract, is required to be filed and the Commission may have jurisdiction to pass on all questions, including antitrust issues.[A16]

In the instant case what is involved is not, as in *Seatrain*, a sale of assets without a sale of the corporate identity. Here it is rather a sale of the corporate equity with the requirement that the acquiring company (Reynolds) maintain both the assets and stock of the acquired company (USL) identifiable to insure the continuing operativeness of the assets and the constant availability of the stock for such disposition as we might order as a remedy for violation of the terms of the acquisition. Needless to say, such a transaction requires continuous regulatory oversight to ensure the conservation of USL's assets and prevent the total absorption of USL by Sea-Land, a result which we conclude must not be permitted under the approved agreement.

By our act of approval, therefore, neither of the principal parties herein (Sea-Land and USL) will vanish forever. The acquired company (USL) will remain intact as a competitive entity, retaining its assets in operative

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[A15] *Id.*, at 946.

[A16] *Id.*, at 945.

form; and the obligation of ensuring the continuation of this status between Sea-Land and USL, and of assessing the subsequent and continuing competitive impact of the approved agreement, is specifically assigned by Congress to this Commission under section 15 which gives us the responsibility for day-to-day surveillance of the activities of common carriers by water in our foreign commerce. Should future circumstances warrant, we are expressly empowered to disapprove any agreement previously approved; or should something less than disapproval be called for, we can modify such an agreement even if the particular modification would require divestiture of previously merged or acquired assets or companies.

B. The Legislative History of Section 15

It is said, however, that the construction of section 15 which would limit the Commission's jurisdiction to "ongoing" agreements is reinforced by the legislative history behind its enactment.

The Shipping Act, 1916, was primarily the result of the work of the House Committee on the Merchant Marine and Fisheries of the 63rd Congress under the direction of its Chairman, Representative J. W. Alexander. A selective reading of the Committee's report might lead one to the view that the Committee was basically concerned with those arrangements which fixed rates, or rotated sailings, or apportioned earnings, etc.—all of which called for operations "over time." Thus, the court in *Seatrain* quotes with approval the Supreme Court's characterization of the Committee's work as "an exhaustive inquiry into the

practices of *shipping conferences.*" (*supra*, at 938) To be contrasted with this rather restricted description of the Committee's area of concern is the designation which the Committee itself gave to the report which embodied the results of its efforts: House Committee on the Merchant Marine and Fisheries, *Report on Steamship Agreements and Affiliations in the American Foreign and Domestic Trade*, H. Doc. No. 805, 63rd Cong., 2d Sess. (1914). This report, called the Alexander Report after the Committee's Chairman, makes it clear that the Committee was indeed concerned with more than "understandings" and "arrangements" to the exclusion of "mergers" and "acquisitions." In fact, Congressman Alexander himself introduced H. Res. 587 which broadened the scope of the investigation to include ownership "by other ship lines or companies." [A17]

Reprinted at pages 10-17 of the Alexander Report are a number of questionnaires sent by the Committee to steamship lines in both the foreign and domestic trades. As might be expected the questionnaire sent to "domestic water carriers" sought much more detailed information on stock ownership "control" and affiliations than did the questionnaire sent to "steamship lines engaged in the American foreign trade." Nevertheless, U.S.-flag carriers had to answer the same questions concerning understandings and arrangements as did the foreign-flag carriers. Additionally, American diplomatic and consular officers abroad had to respond to a questionnaire which included the question, "Report any instances known to you where steamship lines and companies engaged in the foreign commerce of the

[A17] The resolution is included at page 9 of the Alexander Report.

United States are owned or controlled by railway companies or by the same interests owning or controlling railway companies?"

The responses to the questionnaires formed the basis for the conduct of the Committee's hearings, and citations to the Report could be multiplied to show the degree of the Committee's concern with the problem of the merger device as one of the major methods to control or destroy competition.[A18] Perhaps more importantly Congressman Alexander himself in a speech reprinted in the Congressional Record characterized the situation as follows:

> To sum up the entire situation, investigation will prove that over 90% of the regular line coastwise and practically the entire foreign-American shipping is allied through interlocking directorates with the National City Bank, United States Trust Company, National Bank of Commerce, Guarantee Trust Company, all of which have for their fountainhead the Rockefeller-Morgan-Perkins interests. [52 Cong. Rec., Appendix 112 at 118.]

It seems clear, therefore, from the Chairman's comments and the conduct of the Committee's activities, that the Committee and its Chairman thought something more (and different?) than fixing rates or allocating ports was involved whereby competition was being controlled or destroyed; and the Committee was aware that concentration of control in the shipping industry was a major problem.

The opponents of our merger jurisdiction, however, take a peculiar view of the work of the Committee. They vir-

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[A18] See, e.g., Proceedings of the Committee on the Merchant Marine and Fisheries in the Investigation of Shipping Combinations Under H. Res. 587, at Vol. I, 90-93, 128, and 351.

tually ignore all but the last nine pages of the four volumes which comprise the total of the Committee's "report." In these nine pages, the "Recommendations of the Committee" appear, and it is primarily on the basis of a supposed dichotomy in the recommendations for domestic and those for foreign commerce that the opponents of merger jurisdiction rely most heavily. Additionally, both Judge Garth in *Reynolds* and the court in *Seatrain* find in the recommendations of the Alexander Committee an intention to use the word "agreement" in a special or restricted sense; i.e., to include only those understandings or arrangements of an on-going nature. Thus, the court in *Seatrain* concludes:

> * * * the subject of the Committee's investigations was "agreements, conference arrangements, [and] gentlemen's understandings," all of which envision the continued existence of the parties and their participation in such agreements (e.g. in fixing rates, apportioning traffic, pooling earnings, etc.). There is no intention on the part of the Committee to include, nor is there any language in fact so including, the type of arrangements in the case at bar —the acquisition of all the assets of one steamship line by another. The Committee employed terms other than the word "agreement" to refer to transactions not of a continuing nature:
>
> > The numerous methods of controlling competition between water carriers in the domestic trade referred to in the preceding pages may be grouped under three headings viz., (1) control through acquisition of water lines or the ownership of accessories of water lines; (2) control through agreements or understandings; and (3) control through special practices.

> It would be superfluous then, for the Committee to have made this distinction if the Commission were correct in asserting that the Committee used the term "agreement" to encompass transactions other than those constituting cooperative working arrangements. (*Seatrain, supra*, at 939).[A19]

There are several difficulties with these contentions as to the work of the Committee. To begin with, the asserted distinction between agreements and mergers or acquisitions is not tenable; and the Committee did, in fact, use the term "agreement" in discussing mergers, acquisitions, etc. Equally untenable is the opponents' attempted distinction between the Report's applicability to domestic and foreign shipping. The Report indicates a clear intention to regulate mergers and acquisitions in the domestic trades; but the Committee is equally clear in its extensive interest in corporate combinations in the foreign trades. This, combined with the fact that section 15, which was enacted about two years after the Committee's work, makes no domestic, foreign distinction, negates the dichotomy suggested by the opponents.

The Committee dealt specifically with the International Mercantile Marine Company, sometimes referred to as the

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[A19] In a similar vein, Judge Garth concluded: "The agreements represented in the Report are all 'on-going' in nature. Most of these 'agreements' are cooperative working arrangements. These 'agreements' describe practices or regular activities in which two or more shipping companies have agreed to participate over a considerable period of time. None of the 'agreements' studied by the Alexander Committee bears the slightest resemblance to an agreement of merger, which is essentially a single discrete event, which transforms the relationship of the merging parties at the instant of merger." [325 F. Supp. 656, 658-659]

"Shipping Trust," the most notorious of the companies dominating our foreign trade.[A20] As Congressman Alexander said:

> Let me give you a chapter from the recent investigation of the so-called Shipping Trust * * *. The same interests are associated in both the foreign and coastwise shipping. The most prominent shipping corporation controlled by American interests are owned by the International Mercantile Marine * * *.[A21]

The distinction between agreements and acquisitions drawn by the *Seatrain* court cannot be sustained upon close examination of some of the methods of "control" allegedly excluded from the meaning of "agreement." (It is, of course, to be remembered that section 15 requires the filing of agreements "controlling competition.")

Twenty-eight methods of "control" are set out at pages 409-412 of the Report, and under the heading of "Control through acquisition . . ." there appear such methods as:

> (3) Control by lease * * *.
>
> * * *
>
> (5) Joint control of a water line by several railroads.
>
> (6) Control * * * by one or more officers in common or by common representation on the board of directors * * *.

[A20] See Alexander Report, Vol. III, at p. 139. Congressional investigations into shipping in the foreign trade began in 1910 with a resolution to investigate the "Shipping Trust" (H. J. Res. 23). The text of the resolution can be found in 47 Cong. Rec. 8108 (1910).

[A21] 52 Cong. Rec., Appendix 112-118 (1915).

(7) Control indicated by a community of interest through influential stockholders.

(8) Railroad control of competing water or canals through the ownership or control of forwarding companies, thus diverting traffic to their own rail or water lines by refusing to exchange through freight with independent water lines, the latter are thus forced to depend upon local business, which is too limited to maintain the efficiency of the line.

* * *

(10) Ownership or control of bulk carriers by producing and trading companies, which, while controlling a large portion of the traffic in a given commodity also act as common carriers. These companies may also *charter* boats of independent lines on such favorable terms as to induce such lines to observe a certain policy in the fixing and maintenance of rates. [Emphasis added.]

Such methods of controlling competition are as much in the nature of cooperative working arrangements ("on-going" agreements) as in the nature of corporate acquisitions. The Committee, therefore, was concerned with establishing the fact of controlled combinations by uncovering and examining the various devices employed.

Thus, the exclusion of mergers, acquisitions, etc., from the meaning of "agreements" as used in section 15 based upon a supposed distinction between the on-going understanding or arrangement on the one hand and the single discrete merger acquisition, etc., on the other, is not one which existed with the Committee.

Moreover, the Committee itself sometimes used the word "agreement" in its broad commonly accepted sense. For example, in Volume III of the Proceedings,[A22] at page 140, a merger is described as an "agreement":

> [An] *agreement* was concluded between Mr. J. Pierpont Morgan, the famous American financier and organizer of the Shipping Trust, for the purchase of Oceanic shares. The basis of the *agreement* was that the shareholders of Oceanic Co. should receive cash and securities representing 10 times the net profits of that company * * *. The terms of the *agreement* were published in the Daily Mail of May 9 and October 31, 1902. [Emphasis added.]

Again, in Volume I of the Proceedings at page 351, we find the Hamburg American Line-Union Line merger called an "agreement":

> Union Line was practically, under an *agreement*, acquired by the Hamburg-American Line. [Emphasis added.]

We think the attempted distinction between "agreements" and consolidations is too imprecise and undefined to form any part of a statute designed to do no less than regulate the gamut of anticompetitive conduct of an entire industry. Having devoted considerable attention to concentrations in shipping, both in the foreign and domestic trades, it seems unfair to attribute to the Committee an intent to ignore the problem and concentrate solely on "agreements" to fix rates, apportion earnings or rotate sailings. That the Committee did not have any such thing in mind is demon-

[A22] See note A18, *supra*.

trated by its specific allusion to the then recently enacted Panama Canal Act [Aug. 24, 1912, ch. 390, 37 Stat. 560]:

> Section 11 of the [Panama Canal] Act also provides for the divorcing of common carriers by water from the railroads under certain conditions. These legislative requirements go far towards eliminating some of the undesirable practices which were found by this Committee to exist in the domestic commerce of the United States. [Report, p. 422]

As for the remaining undesirable practices, the Committee's specific recommendations included:

> (2) that water carriers be required to file for approval with the Interstate Commerce Commission all agreements or arrangements affecting interstate transportation whether written or oral and all modifications or cancellations thereof, with water carriers with railroads or other transportation agencies or with shippers . [Report, p. 423]
>
> * * *
>
> (12) that all interstate traffic on canals be placed under the supervision of the Interstate Commerce Commission; and that the railroads be prohibited in the future from acquiring, either directly or indirectly ownership or control or interest in canals, or water lines, forwarding companies and other navigation facilities on such canals when the same are used in interstate transportation. [Report, p. 424]

No clearer indication is needed to show the Committee's understanding that effective legislation would have to in-

clude regulatory or supervisory control over acquisitions and transfers of ownership; and, as has been discussed, *supra*, no distinction between domestic and foreign mergers or acquisitions can be engrafted upon section 15 based upon the Alexander Report or the work of the Committee.

Additional clarification is available, moreover, in the legislative history between the Alexander Report issued in February 1914 and the enactment of the Shipping Act, 1916.

The Alexander Report revealed not only that the American merchant marine was becoming heavily monopolized but also that there was a severe shortage of U.S.-flag shipping. With Europe at war by August of 1914, Congress became even more aware of the need for rebuilding the merchant marine and thus the first shipping bills introduced after the Alexander Report were concerned only with promotion of the merchant marine. Thus, in September of 1914, Congressman Alexander introduced H.R. 18666, which proposed government ownership and operation of merchant vessels acting through a shipping board. Government ownership was sought to promote the merchant marine and was expected to have a *de facto* regulatory effect on conference rates. However, in 1915, Congressman Alexander introduced a bill which contained both regulatory and government ownership provisions. Congress adjourned before any action was taken, and the bill was introduced in the next Congress as H.R. 450. Almost immediately thereafter, Alexander introduced another proposal, H.R. 10500, and hearings were held on it in February, March and April of 1916. As introduced, H.R. 10500 had no antitrust exemptions and contained no requirements for the filing of agree-

ments. However, section 9 of the bill incorporated by reference the Interstate Commerce Act, making that Act applicable to the Shipping Board, giving the Board complete power to regulate rates in the industry.[A23] Section 10 of the bill required licensing by the Board of vessels in both domestic and foreign commerce. After hearings, the Committee rejected the philosophy of sections 9 and 10 of H.R. 10500,[A24] and in April of 1916, Alexander introduced H.R. 14337. Finally in May, Alexander synthesized all previous legislative proposals into a single bill, H.R. 15455, and it was this bill that was finally passed by Congress.

Section 16 of H.R. 15455 (enacted verbatim as section 15) was a redrafting of section 3 of H.R. 14337, which latter section required the filing of every agreement, understanding, conference or arrangement "and such agreements, understandings, conferences, and arrangements if approved were exempt from the antitrust laws." Section 16 of H.R. 15455 and section 15 of the Shipping Act merely use the word "agreement" and at the end of the first paragraph, a sentence was added: The term "agreement" in this section includes "understandings, conferences and other arrangements." Thus, the significance of the only amendment concerning "agreement" appears to be in the restoration to it of its commonly accepted meaning as originally used in H.R. 14337, and a specific provision that it include such novel things as "conferences" and the less formal terms "understanding and arrangements." The term "agreement"

[A23] 53rd Cong. Rec. 8077 (1916).

[A24] The Interstate Commerce Act at that time contained no antitrust exemptions. It was not amended to provide for antitrust exemptions of any sort until 1920.

was understood to include the other terms which, therefore, became redundant. We think that commonly accepted and used meaning included agreements which called for mergers, acquisitions, and the like.

C. Legislative History—The 1961 Amendments

It was not until 1961 that the first really comprehensive reexamination of "antitrust" problems in the shipping industry was undertaken by Congress. The genesis of this reexamination was the Supreme Court's decision in *FMC. v. Isbrandtsen*, 356 U.S. 481 (1958), which declared conference dual rate systems unlawful. It was the original intention of the Antitrust Subcommittee of the House Committee on the Judiciary, under the Chairmanship of Congressman Celler, to restrict the scope of its inquiry to abuses of the dual rate system; however, the initial investigation:

> * * * revealed such diverse and widespread anticompetitive practices in the industry that the Chairman decided to expand the subcommittee inquiry to embrace within its scope not only the problem of dual rates and pricing practices but the entire gamut of antitrust problems in the ocean freight industry.[A25]

This expansion in turn resulted in an exhaustive and comprehensive study extending over a period of three years,

[A25] H.R. Rep. No. 1418, The Ocean Freight Industry, Report of the Antitrust Subcommittee of the House Committee on the Judiciary, 87th Cong., 2d Sess. (1962) [the Celler Report].

consuming nine volumes containing about 12,000 pages of testimony and exhibits.[A26]

To place the work of the Antitrust Subcommittee in its proper context two facts should be noted. First, Congressman Celler was co-author of the 1961 amendments, and the investigation by his committee is part of the legislative history of the amendments; and second, although the Celler report was not printed and generally distributed until 1962, it was made available to the drafters of the bill (the House Merchant Marine and Fisheries Committee) in unpublished form.[A27]

There is abundant support in the Celler Report for the inclusion of merger jurisdiction under section 15. The Antitrust Subcommittee's use of the word "agreement" clearly and specifically included agreements of merger. Additionally, and the Court in *Seatrain* notwithstanding, the word "agreement" was also used in connection with the acquisition of the stock of one carrier by another. Thus, at page 47 of the Celler Report we find:

> In the fall of 1960 Isbrandtsen acquired a controlling interest in American Export through the purchase of approximately 26 percent of the latter company's outstanding stock * * *. Under an *agreement* recently approved by the Federal Maritime Commission this purchase constitutes the initial step in a program leading to the consolidation of the mari-

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[A26] Hearings Before Antitrust Subcommittee of the House Committee on the Judiciary, 86th Cong., 1st and 2d Sess., pt. 1, Vols. I-V and pt. 2, Vols. I-II (1959-60); *id.*, 87th Cong., 1st Sess., pt. 3, Vols. 1-11 (1961) [the Celler Hearings].

[A27] See Sen. Rep. No. 760, 87th Cong., 1st Sess. (1961), U.S. Code, Cong. & Admin. News, 87th Cong., 1st Sess. (1961), 3108 at 3116-3117; also 107 Cong. Rec. 10065 (1961).

> time operations of the two companies. The 14 vessels owned or operated by Isbrandtsen are to be transferred to its subsidiary, Isbrandtsen Steamship Co., for about $6 million in promissory notes. Isbrandtsen Steamship Co. will then be sold to American Export for about $11 million. [Emphasis added.][A28]

Congress was well aware that section 15 had been construed to include merger jurisdiction, yet it made no attempt to redefine the word "agreement."

Congress was repeatedly informed that the administrators of section 15 considered mergers to be included within their jurisdiction under that section. By Reorganization Plan No. 7 of 1961 (75 Stat. 840), President Kennedy proposed the establishment of an independent Federal Maritime Commission exclusively charged with responsibility for regulation of the shipping industry. During the hearings on the Reorganization Plan, Admiral Ralph E. Wilson, a member of the Federal Maritime Board, expressed his concern of possible administrative problems in handling transactions that required approvals by both the Commission under the Shipping Act and the Maritime Administration under the Merchant Marine Act of 1936. He stated:

> For example there is an important matter now pending before the Board which involves, *merger of assets*, determination of the adequacy of American

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[A28] See Celler Report 48 dealing with a protest to this "agreement." It is interesting to note that the Department of Justice was quite aware of this assertion of merger jurisdiction by the Commission and yet Justice never once suggested that the meaning of "agreement" be clarified so as to leave mergers, etc., at large under the antitrust laws. See Celler Hearing, Part III 1245-1263. The Department's silence before Congress then is indeed to be contrasted with its vociferous opposition in the courts now.

> flag shipping on certain essential trade routes, the granting of additional operating subsidy and the legality of intent which would require distinct determination by both the Commission and the Maritime Administration. [Emphasis ours.][A29]

The reference as to the then pending American Export-Isbrandtsen merger agreement. Two members of this subcommittee, Edward A. Garmatz and F. Bradford Morse, also sat on the House Merchant Marine and Fisheries Committee. Appearing before the committee, Admiral Wilson reiterated his comment on the merger issue:

> We have now pending an important matter which involves a *merger of assets*, an additional operating subsidy as part of this whole package and a determinatory freezing out of competition and that sort of thing. [Emphasis added.][A30]

Thus, two different committees with an interest in the particular functions to be exercised by the newly proposed Federal Maritime Commission were informed that at least one of those functions would be the exercise of merger jurisdiction.

Congressman Celler, who was quite instrumental in bringing about the creation of the new Commission,[A31] and

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[A29] Hearings Before a Subcommittee of the House Committee on Government Operations, "Reorganization Plan No. 7 of 1961—Maritime Functions," 87th Cong., 1st Sess. (1961), at 46. Congressman Emanuel Celler was the first witness to appear at these hearings.

[A30] Hearings Before the House Committee on the Merchant Marine and Fisheries, Reorganization Plan No. 7 of 1961, 87th Cong., 1st Sess., 91-92 (1961).

[A31] His personal intercession by letter to President Kennedy and his other endeavors on behalf of reorganization are set out at page 3 of the Celler Report.

his subcommittee held hearings in 1962 to review the regulatory efforts of the Commission after its first year of experience under the newly amended Shipping Act. At the opening of these hearings, Chairman Celler made the following statement characterizing the functions and purpose of regulatory agencies such as the Federal Maritime Commission:[A32]

> When the Congress created administrative agencies to supervise the industrial and commercial machinery in certain areas of our economy, it acted in the belief that these specialized commissions would be effective at the same time in protecting the consumer from the self-same evils which the Sherman and Clayton Acts were designed to eliminate. In many instances these regulatory bodies were given the power and authority to exempt certain conduct from the antitrust laws—that is to say, to approve agreements, activities or *acquisitions* that would otherwise run afoul of the antitrust statutes. *Thus, the agency may, to an extent, substitute regulation for competition by permitting competitors to merge or collaborate in ratemaking for example.* [Emphasis ours.][A33]

Lest it be thought that the Commission was not one of those regulatory agencies to which had been given the

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[A32] These hearings can be placed in their proper context only by keeping in mind the active participation of Chairman Celler, the membership and the staff of the Subcommittee in drafting and enacting the legislation amending the Shipping Act.

[A33] Hearings before the Antitrust Subcommittee of the House Committee on the Judiciary, "Progress Report from the Federal Maritime Commission," 87th Cong., 2d Sess., Ser. No. 34 at 2 (1962).

"power and authority" to substitute regulation for competition by permitting mergers, etc., the following colloquy between the Subcommittee and the Commission's Chairman, Thomas Stakem, leaves no doubt that the Commission itself thought it had this power and authority:

> *Mr. Appel.* Turning to another topic in the section 15 category, I would like to ask you a few questions about the implications of the Commission's approval of the Isbrandtsen-American Export merger under the mechanism of section 15 of the 1916 Act.
>
> Prior to the time that this case went to the Maritime Administration for subsidy consideration the Federal Maritime Commission in February of this year upheld its initial decision, did it not?
>
> *Mr. Stakem.* Yes it did.
>
> *Mr. Appel.* And, in this case, it granted approval under section 15 of the Act to an agreement between the Isbrandtsen Co. and American Export, the overall effect of which was, in the words of the Commission—
>
> > for Isbrandtsen to transfer its liner fleet of some 14 ships and its entire business to American Export, agreeing as part of the transaction not to compete without Export's consent.
>
> The Commission concluded that this constituted an agreement "controlling, regulating and destroying competition," that the agreement which had been filed with the predecessor Board fell squarely within the "clear unqualified language of section 15" requiring action by the Commission to either "approve or disapprove, cancel or modify."
>
> And the Commission further held that the agreement was not in violation of any proscription of the Act, is that not so?

Mr. Stakem. Yes. The Commission felt that the language of the law clearly gives it an interest in this sort of an arrangement. . . .[A34]

Mr. Johnson. Mr. Stakem let me cut in there for a moment for just one question. The Celler-Kefauver Act of course provides that where an agreement is approved, to the extent that the Commission can give it immunity from the antitrust laws, it receives that immunity does it not?

Mr. Stakem. Yes sir.

Mr. Johnson. In passing on a merger, does the Commission take into account the standards of the Celler-Kefauver Act; namely, whether the merger will tend to substantially lessen competition or to create a monopoly in any line of commerce?

Mr. Stakem. I would like to have counsel answer that if you will.

Mr. Pimper. Of course. I think the answer to that is yes. . . .[A35]

Mr. Appel. Does the Commission's approval of the Isbrandtsen-Export merger grant to these parties the same antitrust exemption accorded to all other parties who have their agreements approved under section 15 of the Act?

Mr. Stakem. Yes. I think it carries with it the immunity, but I think we must also keep in mind that if upon a complaint that this was operating to the detriment of U.S. commerce, that there is always the possibility of complaint and review by the Commission.[A36]

[A34] *Id.*, at 40.

[A35] *Id.*, at 21.

[A36] *Id.*, at 21-22. Of course, it is argued that the key to the Commission's jurisdiction in the Isbrandtsen-Export merger was the "non-compete" clause. Aside from the fact that the Commission's decision was not based on any such clause (see 11 F.M.C. at 62-

We think the foregoing discussion of the legislative history of section 15 both before and after 1916 shows something more than jurisdictional "wishful thinking" on our part.[A37] It shows that in 1916 Congress was well aware of the problems of concentration in the Merchant Marine, and that the term "agreement" was used in section 15 in its generally accepted sense—it was also defined to include the rather specialized term "conferences." To define agreement so as to exclude single discrete events is to attribute to Congress the intent to ignore a major problem in the industry after having devoted considerable time to the study and discussion of it.

Additionally, the meaning of the term agreements was reexamined in both the period preceding the 1961 amendment and reenactment of section 15 and in the period immediately thereafter. During this time, Congress was on a number of occasions specifically informed that the agency to which it had entrusted the administration of section 15 considered that its jurisdiction under that section included agreements to merge.

Thus, as has been discussed and as will be developed more fully, the Commission's jurisdiction herein is being applied not to a "single discrete event" merger, but to an agreement which is within the jurisdiction of the Commis-

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[A36] (Continued.)

63), the notion that jurisdiction turns on "non-compete" clauses can only make possible "agency-shopping" much like the kind of forum shopping so deplored by the courts. The "clause" can be either put in or left out, depending upon whether the parties to the agreement desire to deal with the Commission or the Justice Department. We cannot underestimate the ingenuity of the industry in producing apparently valid non-compete clauses in merger situations.

[A37] *Seatrain Lines, Inc.* v. *F.M.C., supra.*

sion whether or not our section 15 authority applies to the "mergers" which Justice tries to distinguish from other agreements. Nevertheless, even if the agreement we are approving is a "merger," it is our conclusion that merger agreements are among those over which we have jurisdiction under section 15. In either event, all the agreements involved, the charter, the proposed merger, the supplemental agreement and the promissory note, are subject to Commission jurisdiction as indispensible parts of a whole arrangement. The supplemental agreement and promissory note are discussed fully, *infra.*

2. MERITS

Our decision and order is founded on approval of an on-going agreement under statutory continuing surveillance by the Commission with a system of policing and review of the activities of Reynolds/Sea-Land and USL based upon an amplification of our Congressional mandate.

We have accomplished this by the binary nature of our action herein. First, we are approving the proposed agreement in a form so modified as to continue USL as an independent carrier entity. Second, we are attaching conditions to our approval to assure the intended result.

The conditions, which are set forth and discussed further, *infra,* are designed to prevent the disappearance of USL into the corporate structure of Reynolds and insure our ability to maintain our surveillance and policing functions mandated under section 15 with respect to all agreements approved by the Commission.

Conditions I.A. and B. require that the USL stock be neither transferred nor encumbered by RJI, the Reynolds

subsidiary which will acquire the stock. This assures that the stock will always be intact and reachable in the event we should subsequently disapprove or further modify the agreement. In addition, with respect to USL, the corporate ownership pattern among Reynolds, RJI and USL may not be altered without our approval.

This is important because in condition I.D. we include divestiture of USL stock as one of the possible remedies available to the Commission in the event we should at some time find it necessary to disapprove the agreement.[A38] As provided in this condition, a breach of any of the conditions could provide grounds for disapproval and divestiture. Further, condition III, first paragraph, provides for constant Commission scrutiny of the parties' activities to insure that any alteration in competitive circumstances is consistent with the conditions as a whole. An investigation into that aspect of the parties' activities may be initiated by the Commission on its own motion or on petition to the Commission by a person having an interest therein.

Although our general obligation to exercise continuing Commission surveillance is required by the Shipping Act under section 15, we nevertheless restate that obligation in condition I.C., additionally providing for specific review of the approved agreement and activities thereunder at least every five years. To aid us in pursuing this responsibility, other conditions are included which will constantly provide us with information on the parties' actions. Condition III.A.1. requires that one corporate director of USL and one corporate director of Sea-Land be a "public mem-

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[A38] See note A54, *infra*. See, also, text accompanying note A11, *supra*.

ber." These directors are to be appointed by an independent and neutral source, and are to report to us on, *inter alia*, the parties' decisions relating to matters of competition. There is also to be a semiannual reporting to the Commission by the parties with respect to their adherence to all the conditions, and the Commission is to have access to all the records of the parties. This is required in conditions IV. and IV.A.

Other conditions (e.g., III. C., D., E., and F.) contemplate the need for further specific Commission action. These listed conditions prohibit various activities by the parties (e.g., common terminal facilities, pooling, service rationalization) without our prior authorization. Thus there will be a continuum of permissible activity under the approved agreement, subject to change and modification only by order of the Commission.

The remaining conditions contain, generally, additional restrictions on the activities of the parties and supplement those just discussed. Taken *in toto* the conditions require constant activity on the part of the Commission to ensure compliance by the parties, to enable us to further modify the agreement if required by changed circumstances, and to disapprove the agreement if the situation warrants.

It is argued by the agreement's opponents, however, that regardless of the defensibility of our philosophy, conclusions and methodology, we may not take the action herein. It is contended that because the agreement being approved was proposed in our Order Reopening Proceeding for Limited Purposes (served June 7, 1972) it was therefore not subjected to evidence at the hearing to enable the making of the necessary supporting findings of fact.

First, it would hardly have been in keeping with the Commission's responsibilities for us to have simply disapproved the agreement on the ground that its original terms were inadequate to achieve the full measure of the agreement's benefits. Such an action would be an exercise in negative regulation, a condition totally unacceptable for progressive regulation in an age of intermodal transportation modernity. The Commission has rejected such an attitude, an exemplified by the Commission's decision in *Disposition of Container Marine Lines*, 11 F.M.C. 476 (1968), and cases cited therein.

In that case the Commission was presented with an innovative and controversial tariff filing which was acceptable in principle but unacceptable by reason of technical deficiencies. Consequently, we set forth in our report the manner in which the tariffs could be made suitable to the desired result and accepted the filings upon condition that the faults be remedied in the manner prescribed. In reaching that result we said:

> * * * the Commission need be ever mindful of its responsibilities as a body to which Congress has delegated certain responsibilities. The exercise of that delegated authority was intended by Congress, and must be interpreted by us, to be performed in the most judicious manner in our quasi-judicial capacity and in our best discretion. The administration of the Commission's duties requires flexibility of action and purpose when necessary and possible.[A39]

[A39] *Disposition of Container Marine Lines*, 11 F.M.C. 476, 482-483 (1968). See also *American Trucking Assns., Inc.* v. *A.T. & S.F. Ry. Co.*, 387 U.S. 397, 416 (1967) cited at p. 489 of the *Container Marine Lines* case.

Second, there was no denial of due process rights relating to a fair hearing on the conditions and the agreement as herein approved. The issue of alternatives to the agreement as filed and the issue of an acquisition and/or merger without a charter were always in this proceeding,[A40] explored at the hearing and considered by the Chief Administrative Law Judge.[A41] In our Order of June 7, 1972, we provided the parties an opportunity to comment on the conditions we proposed[A42] and invited them to offer their own additional conditions.

One other preliminary matter is also pertinent here. That is the relationship between antitrust and Shipping Act considerations in cases before the Commission concerning section 15 agreements.

Essentially, it is the duty of the regulatory agencies and the courts to accommodate or harmonize antitrust and regulatory principles. See *Seaboard Airlines R.R.* v. *U.S.*, 382 U.S. 154, 156 (1965). Regulatory agencies have long used the antitrust laws to give "understandable content to the broad statutory concept of 'the public interest' contained in their statutory standards."[A43]

[A40] See list of issues contained in our Order of Investigation, *supra*, at p. [16a].

[A41] *Supra*, at p. [78a] and, *infra*, at [p. 148a].

[A42] In fact we have been persuaded by the comments of the opponents as to certain conditions and we have rejected certain of proponents' suggested changes, especially in dealing with all important conditions relating to the competitive relationship among the corporations. See pp. [168a-170a] *infra*.

[A43] *F.M.C.* v. *Svenska Amerika Linien*, 390 U.S. 238, 244 (1966); *Volkswagenwerk Aktiengesellschaft* v. *F.M.C.*, 390 U.S. 261, 274 n. 20 (1968); *Denver & Rio Grande Western R.R. Co.* v. *U.S.*, 387 U.S. 485, 492-94 (1967); *California* v. *F.P.C.*, 369 U.S. 482, 484-85 (1962); *U.S.* v. *RCA*, 358 U.S. 334, 351 (1959); *McLean Trucking Co.* v. *U.S.*, 321 U.S. 67, 79-80 (1944); *City of Pittsburgh* v. *F.P.C.*, 99 U.S. App. D.C. 113, 237 F. 2d 741 (1956).

In the instant case, even though the antitrust laws embody at least a part of the public interest which this Commission considers in acting on section 15 agreements, in the last analysis the regulatory laws must take precedence. A regulatory agency which, like the Federal Maritime Commission, while reconciling its policies with antitrust philosophy, nevertheless must apply its own laws and standards, not those of the antitrust laws.[A44] The Commission must use its expertise in its specialized field to give viability to the antitrust laws in the area of the Commission's ocean trade jurisdiction.

The Federal Maritime Commission provides the nexus for our basic national antitrust philosophy and the national maritime policy as expressed in our shipping statutes. Although the Commission is not the agency that exercises primary jurisdiction over our antitrust laws, the principles embodied in those laws are always present in Commission deliberations concerning, especially, agreements filed for approval under section 15. The Congress, when drafting the Shipping Act and establishing the Commission, mandated this responsibility by permitting agreements approved by the Commission to be exempt from application of the antitrust statutes.[A45] Thus because of this consequence

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[A44] *F.M.C.* v. *Svenska Amerika Linien, supra,* at 243; *Minneapolis & St. Louis R. Co.* v. *U.S.*, 361 U.S. 173, rehearing den'd. 361 U.S. 945 (1960); *Seaboard Airlines R.R. Co.* v. *U.S., supra,* and on remand *sub. nom. Florida East Coast Ry. Co.* v. *U.S.*, 259 F. Supp. 993 (M.D. Fla. 1966).

[A45] Section 15 provides, in pertinent part:

> Every agreement, modification, or cancellation lawful under this section, or permitted under section 14b, shall be excepted from the provisions of the Act approved July 2, 1890, entitled "An Act to protect trade and commerce against unlawful restraints and monopolies," and amendments and Acts supple-

of its approval of a section 15 agreement, the Commission pursues its obligation to consider the anticompetitive implications of such action. We strike a balance by determining whether the public interest as set forth in our governing statutes will be served by sanctioning an anticompetitive activity in the interest of our maritime policy.

We must, therefore, approach the merits of this case from two convergent lines of reasoning: One involving shipping statute considerations and those of the antitrust laws.

To begin with, and as we said at the outset, the agreements at issue must be tested against the standards for approvability set forth in section 15.[A46] Additionally, the Commission must examine the agreements to determine whether they meet those standards as amplified by the Commission with the affirmation of the Supreme Court in *FMC v. Svenska Amerika Linien*, 390 U.S. 238 (1968). In our report precursing that Supreme Court decision we said that proponents of an agreement must "bring forth such facts as would demonstrate that the . . . [agreement] was required by serious transportation need, necessary to secure important public benefits or in furtherance of a valid regulatory purpose of the Shipping Act."[A47]

The Chief Administrative Law Judge, utilizing this test, rejected the agreements. This we believe is a concession to

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[A45] (Continued.)

mentary thereto, and the provisions of sections 73 to 77, both inclusive, of the Act approved August 27, 1894, entitled "An Act to reduce taxation, to provide revenue for the Government, and for other purposes," and amendments and Acts supplementary thereto.

[A46] For the text of section 15 as far as pertinent, see note A1, *supra*.

[A47] *Investigation of Passenger Travel Agents*, 10 F.M.C. 27, 45 (1966).

the philosophy that FMC jurisdiction is narrow and restrictive. We, however, reach the opposite conclusion, and find that the standards of section 15 and *Svenska* are fully met. The Chief Administrative Law Judge rejected the plans of the proponents as being more self-serving than accruing to the public benefit in the form of a "transportation need" or "public benefits." It is apparent, therefore, that although we generally accept the findings of fact in the initial decision, we view some in an entirely different perspective. Our view is that of an overall approach to all the agreements at issue and alternatives to the proposed merger agreement, as opposed to a limited and particularized view of various facets of the proponents' plans. This can best be seen in the Commission's Order Reopening Proceeding for Limited Purposes of June 7, 1972,[A48] (hereinafter sometimes "Order") and in the comments of the parties filed pursuant thereto.

The Order, which was served following oral argument,[A49] reopened the proceeding and announced our preparedness to approve the acquisition by Reynolds of all the outstanding common stock of USL held by Kidde subject to proposed conditions which assure the maintenance of USL as a viable independent corporation with Reynolds providing financial assistance to maintain USL as such a corporation. We stated in the Order that:

> *We are disposed to make this determination to help create continued substantial American-flag par-*

[A48] Chairman Bentley and Commissioner Barrett voted against the issuance of the Order.

[A49] In view of our action herein the Motions to Strike Portions of the Oral Argument are denied.

ticipation in international maritime competition. Our approach is with a view toward maintaining USI as a strong independent U.S.-flag carrier, and precluding its dismemberment. The latter possibility is very real under the intent of the Supplemental Agreement as indicated by its terms; and to permit such an eventuality would be a disservice to the American merchant marine and a severe detriment to the public interest in a strong and competitive American merchant fleet.

Under the current and developing structure of international ocean commerce, there is a great need to assure the continued operation of efficient and productive U.S.-flag carriage in all major trades. Consequently, our inclination to approve the acquisition would not result in an approval of the type of corporate consolidation wherein one company survives and the other does not. Our desire is rather to ensure the survival of existing American-flag service by permitting the infusion of new and private capital into our merchant marine fleet. What we envision here are two independent companies to be operated under a continuing Sec. 15 agreement.

As a result we envision stronger U.S.-flag competition in international maritime markets; vigorous competition for United States military and government controlled cargo; and FMC access to carrier data used in arriving at rates for government cargo.

On the strength of the conditions to approval set forth below and others which may be suggested, the Commission will be able to assure the above benefits, and we will be able also to prevent any restraint of trade without need or justification; to assure our continuing surveillance and review of Reynolds/Sea-Land and USL activities through receipt of peri-

odic reports; and to retain a practicable option to dissolve the acquisition upon breach of any conditions attached to the acquisitions. (Emphasis added.)

We also posed numerous conditions geared to obtain the desired result and ordered the parties to submit memoranda and replies to those conditions, including any other conditions to be suggested by the parties.

The underscored language of our Order, *supra*, is crucial to our disagreement with the Chief Administrative Law Judge, and the philosophy expressed forms an essential part of the basis for our ultimate conclusions.

Some opponents to our Order point to the *Svenska* case and the doctrine that agreements must be justified by public benefit or serious transportation need sufficient to outweigh any injury to competition. They claim that the Commission's Order would serve to approve a merger while rejecting all grounds for approval. In that respect, it is argued that all the claims of record for approval will have evaporated since USL would be maintained as a "viable independent corporation" and not the combination sought through the proposed merger.

Proponents counter by claiming there is an abundance of evidence to support *Svenska* tests, that the single greatest transportation need is the accomplishment of rationalization obtained through approval and by providing USL with a stable financial base to provide shippers with effective and dependable service.

It is argued by some opponents that the decision to approve the acquisition in order to prevent the "dismemberment" of USL is a "fabricated strawman" since that

possibility, they claim, exists only because of the supplemental agreement. They contend that since the Commission concluded that it has jurisdiction over the stock acquisition, it should also have jurisdiction over the supplemental agreement and prevent dismemberment by disapproving it; or, alternatively, the dismemberment could be stopped by injunctive relief. It is also claimed that dismemberment isn't even necessary in view of recent profitable operations of USL.

The status of the supplemental agreement and the significance of USL's financial condition are problematic matters. Yet, the opponents' attempt to employ an interconnection between them to dissuade us from our conclusions is not supported by the record. It arises from a misinterpretation of the reasoning in our Order and out of a misunderstanding of the nature of the supplemental agreement. What the opponents fail to recognize is the relationship among the premise of the supplemental agreement, our jurisdiction over it, and our approval of the proposed agreement in a modified form.

The parties fully intend, by virtue of the supplemental agreement, the destruction, liquidation, or dismemberment of USL as a single common carrier entity to be a possible result of this entire proceeding if the Commission disapproves the merger as proposed.[A50] This much is indisputable.

[A50] The supplemental agreement provides, in part, as follows:

> Section 3. Unless the acquisition shall have been accomplished as provided in the Merger Agreement or as provided in Section 1 above, the financial institution selected as provided in Section 2 above shall be authorized and empowered to make disposition of U. S. Lines, its Common Stock or assets (to-

Reynolds, Sea-Land and Kidde/USL argue, however, that the supplemental agreement (which is intended to take effect if the proposed merger is disapproved) is not subject to section 15 since it is not an agreement between common carriers or persons subject to the Act (Reynolds and Kidde

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A50 (Continued.)

gether with assumption of its liabilities) in public or private sale or sales or otherwise, in the manner hereinafter specified in Section 4. Kidde agrees to cooperate fully to effect such disposition and to use its best efforts to obtain all necessary approvals.

* * *

Section 4. In order to effect the disposition of U. S. Lines as desired by Kidde in the event that neither Reynolds nor a substitute party as provided in Section 1 is available and able to accomplish its acquisition, the financial institution chosen as provided in Section 2 hereof shall:

(i) Cause a public sale of all of U.S. Lines Common Stock to be made; or

(ii) Cause a distribution of the U. S. Lines Common Stock to be made to the stockholders of Reynolds and promptly thereafter deliver, or cause to be delivered, to Kidde the Note; or

(iii) Cause the vessels and related containers, chassis and other equipment necessary in the operation of such vessels of U. S. Lines to be sold at competitive bidding and cause the other assets of U. S. Lines to be sold, in each case at prices acceptable to Reynolds and resulting in the satisfaction of all liabilities of U. S. Lines or their assumption by a purchaser or purchasers with credit acceptable to Kidde;

(iv) Utilize any combination of the methods set forth in (i), (ii) or (iii) hereinabove in order to dispose of the U. S. Lines Common Stock or the assets and liabilities of U. S. Lines, as the case may be, and to ensure to Kidde's satisfaction consideration to Kidde of a value equal to the Note, it being understood that, if not materially disadvantageous to Reynolds, it is intended that such disposition shall be by one of the methods set forth in (i), (ii) or (iii) in order to preserve U. S. Lines as an operating entity . . .

See, also Initial Decision, Appendix "A", *supra*, at p. [87a], and footnote A7, *supra*.

are the only parties signatory), and does not affect competition or otherwise come within the boundaries of the Act. APL and AML claim that it is subject to the Act because of its "shipping effect" and, further, that it has been carried out without the required approval. Hearing Counsel argue that the real parties to the agreement are Sea-Land and USL.

Justice agrees with the proponents' view that the supplemental agreement is not subject to Commission jurisdiction under section 15, and, consequently, can be governed by court action under the antitrust laws.

Although the Chief Administrative Law Judge concluded that the supplemental agreement is not subject to section 15, he did state:

> Should the Commission disagree with this conclusion, the discussion found in Appendix "A" is submitted as an aid to the Commission in its determination as to whether the supplemental agreement should be approved.[A51]

In Appendix "A" he noted, "The agreement certainly contains the seeds of possible control, prevention, or destruction of competition. Furthermore, the agreement is primarily for the benefit of Kidde and Reynolds, not for the benefit of the public." Accordingly, he concluded that it should be disapproved.

The Chief Administrative Law Judge pointedly recognized that "The supplemental agreement would permit Kidde and Reynolds to achieve what they would be denied if the merger were disapproved. Denial would place Rey-

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[A51] *Supra*, at p. [48a], note 19.

nolds in the driver's seat in determining the future of USL."[A52] AEIL has argued that "the so-called Supplemental Agreement now looms as the important tactical device whereby Reynolds/Sea-Land can destroy Sea-Land's major competitor, U. S. Lines." They also conclude that, "Viewing the matter properly, there is an agreement *between Reynolds and Kidde* whereunder Reynolds had agreed to take U. S. Lines off of Kidde's hands, irrespective of any Federal Maritime Commission approval."

We agree with some of the possibilities inherent in these observations. We are also impressed with the argument that "Kidde would be obliged to again find a way to dispose of USL and Kidde would be forced to liquidate USL if it could not promptly find a buyer."[A53]

Consequently, if we were to simply terminate the matter by disapproving the basic merger agreement, we would nullify the benefits which we conclude will result from the activities authorized by our approval of the modified agreement as set forth herein. In practice, most section 15 agreements are not approved as initially presented to the Commission. It is after consultation between the parties or applicants and the Commission, resulting in modifications, that the section 15 agreement is approved in final and different form.

The dismemberment of USL as an end result of these proceedings is a possible, if not probable, consequence of all the various alternatives which we could reach, except the one herein proposed by us if accepted by the proponents.

Thus, regardless of our disposition of the charter and

[A52] *Supra*, at p. [87a].

[A53] *Id.*

proposed merger, and regardless of any action we and/or the Justice Department might take with respect to the supplemental agreement, it is still open to Kidde to relieve itself of the USL assets which Kidde apparently regards as an expendable and unnecessary burden to its corporate operations. Whether jurisdiction over the supplemental agreement is ultimately found to be with the Commission or the courts, Kidde could easily select a method of disposing of USL's physical assets which offends neither the Shipping Act standards, on the one hand, nor the antitrust policy of Justice on the other.

In either event, the net result would be the disappearance of USL as a single common carrier entity. The immediate and primary beneficiary would be Reynolds/Sea-Land who would lose USL as a hitherto significant competitor. A similar effect would, of course, be felt by the various common carrier opponents of the proposed merger. These benefits, however, obviously do not inure to the overriding public interest in the maintenance of healthy competition in the merchant marine industry. Our action, by keeping USL afloat, provides our merchant marine with tools to insure the viability of the industry.

The Chief Administrative Law Judge premised his disapproval of the agreement on his finding that the results of the proposed merger would redound foremost to the benefit of the proponents. Yet, disapproval will have the same result, permanently. Once dismantled, neither we, nor Justice, nor "all the king's men," will be able to put USL "together again."

Contrarily, with the approval we grant herein, the Commission will maintain continuing surveillance, not over

fragments of carriers, but over whole entities operating under improved competitive circumstances; and, if future activities under the approved agreement should fall short of our judgment and expectations, or if the parties should violate any of the conditions of approval, it will be possible for the Commission to disapprove the agreement already approved or fashion any other appropriate remedy. As has been said by the Supreme Court:

> Finding a wrong which it is duty-bound to remedy, the Maritime Commission, as the expert body established by Congress for safeguarding this specialized aspect of national interest, may, within the general framework of the Shipping Act, fashion the tools for doing so.[A54]

In the same case, the Supreme Court also said as follows:

> It can hardly be suggested that the protection of the national interest in interstate and foreign commerce or even the convenience of the parties would, as a matter of sensible and economic administration, limit the Commission to * * * negative means of dealing with the evils revealed on this record * * *.[A55]

Although that case dealt with the evils of violations of sections 16 and 17 of the Shipping Act, the reasoning may be applied with equal vigor to preventing evils which would result from a negative Commission decision, culminating in our failure to take appropriate action. The ultimate result would be contrary to the public interest and the general welfare.

[A54] *California* v. *U.S.*, 320 U.S. 577, 584 (1944).

[A55] *Id.*, at 582.

Consequently, the Commission is obligated not only to prevent implementation of the supplemental agreement by disapproving it, we are equally obligated to approve an agreement which will both produce the benefits of the proposed corporate consolidation and also prevent the evil which might result with or without use of the supplemental agreement. Our ultimate conclusion herein—approval of the basic agreement with certain conditions—is dedicated to that purpose.

From the foregoing it can be seen that there are ample grounds for our conclusion that the supplemental agreement is within the Commission's jurisdiction. Additionally, however, the Chief Administrative Law Judge, although arriving at the opposite conclusion, based his decision upon findings which we believe upon careful analysis cast more weight toward our point of view. Recognizing that it is a "close question" he posed the following considerations about the supplemental agreement: (1) it cannot be implemented, in some respects, except through the action of USL under Kidde's orders; (2) Reynolds' primary consideration is to secure the USL fleet for the use of its subsidiary, Sea-Land; (3) it is a means by which Reynolds—and more importantly, Sea-Land—could acquire USL upon disapproval of the merger; (4) it states that it embodies the merger agreement and related documents between the parties; (5) Reynolds has been actively behind Sea-Land's operations, including its building program; (6) Reynolds and Kidde have undertaken considerable financial and managerial responsibilities on behalf of their subsidiaries; (7) Reynolds has certain veto powers over the sale of USL; (8) according to a witness, Reynolds would expect to be

heard should USL be disposed of by an institution selected by Reynolds; and (9) USL would continue to be an operating entity to the extent it would not be materially disadvantageous to Reynolds.[A56]

In viewing the above considerations and the arguments of the parties, he concluded that in this instance he could not agree with the theory that the document really has been executed by Reynolds and Kidde as the alter egos of Sea-Land and USL; and the fact that there is a "shipping effect" does not necessarily bring it within the purview of section 15 since Sea-Land and USL, even though affected to some extent, are not the real parties in interest. He concluded, "Should the merger not be approved the supplemental agreement comes to full bloom, the charter application is abandoned, and Reynolds/Sea-Land terminate their interest in USL."[A57]

To this last statement we cannot subscribe. As discussed, *supra*, Reynolds/Sea-Land will not terminate their interest in USL if the proposed merger is disapproved;[A58] and thus

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[A56] *Supra*, at pp. [47a-48a].

[A57] *Supra*, at [p. 48a].

[A58] The supplemental agreement provides, in part, as follows:

> Section 2. It is understood and agreed that neither Reynolds nor any subsidiary or affiliate of Reynolds shall have any control over the finding or designation of any substitute party pursuant to Section 1 above or as hereinafter provided. Such control shall be vested in such financial institution as shall be designated by Reynolds within thirty days after it becomes obligated under Section 1 to cause a substitute party to be found. Neither Reynolds nor any subsidiary or affiliate of Reynolds shall have any standing to object to any substitute party under Section 1 designated by such financial institution and acceptable to Kidde *unless such purchaser represents a credit with respect to its note in the principal amount of $65,000,000 which is determined by Kidde to be unacceptable*

the proposed merger and supplemental agreement are inextricably related.

We will not permit corporate devices to prevent us from recognizing that the real parties in interest in the supplemental agreement are the two common carriers by water —USL and Sea-Land. The very reasons cited by the Chief Administrative Law Judge in finding no jurisdiction persuade us that the supplemental agreement is within our jurisdiction under section 15, and, further, that it should not be approved.[A59]

As noted earlier, one of the arguments of the opponents is that our ultimate conclusion in this case is not justified to prevent dismemberment of USL because of the recent improved financial condition of USL.

[A58] (Continued)

without the guaranty of Reynolds or the fair value of U. S. Lines is in the judgment of Reynolds in excess of the price offered by such substitute party. (Emphasis added.)

* * *

Section 4. In order to effect the disposition of U. S. Lines Lines as desired by Kidde in the event that neither Reynolds nor a substitute party as provided in Section 1 is available and able to accomplish its acquisition, the financial institution chosen as provided in Section 2 hereof shall:

* * *

(iv) Utilize any combination of the methods set forth in (i), (ii) or (iii) hereinabove in order to dispose of the U. S. Lines Common Stock or the assets and liabilities of U. S. Lines, as the case may be, and to ensure to Kidde's satisfaction consideration to Kidde of a value equal to the Note, it being understood that, *if not materially disadvantageous to Reynolds*, it is intended that such disposition shall be by one of the methods set forth in (i), (ii) or (iii) in order to preserve U. S. Lines as an operating entity * * *. (Emphasis added.)

[A59] *Supra*, at p. [87a].

The Chief Administrative Law Judge stated his views as follows:

> The single plausible ground for the merger is the protection of USL's financial stability. But a fair comparison of the company's recent troubles with its apparent renascence in that respect leads to the conclusion, in the Examiner's judgment, that USL has weathered its monetary crisis to the point where its independent position in the foreign commerce of the United States outweighs the desirability or necessity of its takeover by Reynolds.[A60]
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> * * *
>
> Granted that the position of Reynolds is such that it could be of real assistance in helping USL to tide itself over the shortage of capital, all indications are that USL can and will eventually extricate itself from its present financial morass and remain a formidable—and therefore a highly desirable—competitor of Sea-Land.[A61]

We disagree with that conclusion based primarily on the same reasoning we have applied with respect to the supplemental agreement. The perspective of the Chief Administrative Law Judge was limited to consideration of the various issues in their relationship to the total merger proposed in the filed agreements. Thus, his evaluation of both the financial condition of USL and the significance of the supplemental agreement was made only within the framework of the proposed merger.

As we have said, our view is much broader. The Chief Administrative Law Judge considered any indications of

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[A60] *Supra*, at p. [86a].
[A61] *Supra*, at p. [80a].

an improvement of USL's financial structure to present a more desirable alternative to the proposed merger. With that we do not totally disagree, except that a financially sound USL is not, under existing circumstances, a viable alternative. The Chief Administrative Law Judge gave insufficient weight to the possibility that regardless of USL's financial posture, Kidde (as evidenced by the agreements) is determined to be rid of USL. Consequently, we have opted for a result which will include both a financially sound USL (whether or not the record establishes that to be the fact now) and the acquisition of USL by Reynolds. Contrary to the conclusion of the Chief Administrative Law Judge we find these two results not to be mutually exclusive, but mutually dependent.

In arriving at a conclusion opposite to that of the Commission, the Chief Administrative Law Judge took official notice of certain material outside the record[A62] to make the following observations:

> USL is now forging ahead but Kidde wants to rid itself of the child because the returns of the latter do not satisfy the financial requirements of the parent (this position is quite normal in the business world). It must not be overlooked, in appraising USL's difficulties, that the principal reasons for its money bind were the capital requirements involved in the new containerships, inability to obtain vessels on time, and the nonresumption of operating differential subsidy. USL of course is not completely out

[A62] A report in the *Wall Street Journal* of an interview with Kidde's chairman published on September 22, 1971, and his conclusory characterization of a portion of testimony of the president of USL before a companion proceeding before the Interstate Commerce Commission. See, *supra*, at [pp. 79a-80a].

> of the financial woods; far from it. But it is hard to believe that one of America's oldest and best-known ocean common carriers, given what appears to be good leadership, plus the improvement in its resources, should be considered such a bad risk that the public would be benefited by merger with its largest competitor. Granted that the position of Reynolds is such that it could be of real assistance in helping USL to tide itself over the shortage of capital, all indications are that USL can and will eventually extricate itself from its present financial morass and remain a formidable—and therefore a highly desirable—competitor of Sea-Land.[A63]

Predictably, the use of official noticed material generated motions and pleadings culminating in proponents not availing themselves of a Commission opportunity to rebut the noticed materials on the basis of the "restrictive limitations" placed therein.

The record, however, provides sufficiently detailed evidence casting doubt upon a conclusion that USL can continue as a viable participant in the American merchant marine; and we disregard and exclude from our findings and conclusions the material officially noticed by the Chief Administrative Law Judge.

Although it has been argued that the financial condition of USL is not a factor relevant to our considerations, we think this view negates a considerable portion of the record. The issue was extensively litigated.[A64]

[A63] *Supra*, at [p. 80a].

[A64] During the course of the hearing, 29 exhibits were received in the record concerning the financial structure and condition of USL.

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The record on the financial condition of USL reflects that from 1968 through 1970 (excluding accounting reserves) USL lost approximately $22 million, had defaulted on a bank loan of $27 million, and Kidde was required to advance it $9 million ($7 million of which was applied toward current obligations for a four-month period). For 1971 USL would have a negative cash-flow of approximately $35-$36 million. Two new Lancer vessels were mortgaged with the proceeds utilized as partial payment on the overdue bank loan and to make up cash deficits attributed to operations. And despite the many variations on the theme on the actual financial condition of USL raised by the opponents, the record supports a finding that USL's financial instability is basic and might very well continue as such in the future.[A65]

Furthermore, Kidde wants to sell its holdings in USL; and even assuming an improvement in USL's financial condition, such improvement is not likely to be considered sufficiently promising to justify a reversal of Kidde's intention. Certainly we would not be dissuaded from our conclusions as to the prospects for USL's financial stability by any such possibly temporary improvement.

Even, however, assuming a substantial improvement in USL's financial condition, there is no assurance either that the improvement will continue or that USL's financial health will be maintained. We are acutely aware of the historic cycle of "peaks and valleys" in the financial condition of U.S.-flag carriers; and the Chief Administrative

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[A65] *Supra*, at pp. [20a-21a].

Law Judge found this condition to exist with respect to USL.[A66]

Our resolution of this case, whereby we combine an independent USL with the acquisition by Reynolds, looks toward avoiding such vagaries in our merchant marine industry or at least alleviating their effects. In addition, regardless of USL's actual and/or potential financial soundness, we must also weigh Kidde's determination to dispose of USL. Our consideration of the financial circumstances of USL relates not only to the alternatives considered by the Chief Administrative Law Judge, but even more to our determination of whether alleged anticompetitive consequences resulting from our approved alternative are offset by *Svenska* and public interest standards.

It must be remembered that the Chief Administrative Law Judge concerned himself primarily with a proposed merger which would permit USL's fleet of containerships to be at the disposal of another company, specifically Sea-Land. Our decision eliminates that concern by tying the independence of USL to the prospects of its financial stability, and under strict conditions designed to help ensure the maintenance of that result. The framework (i.e., that of the proposed merger) within which the Chief Administrative Law Judge and the opponents viewed USL's financial condition is modified so as to restrict the parties' permissible sphere of activity. This has been accomplished through a series of conditions to our approval which are fully explained, *infra*.

[A66] Chief Administrative Law Judge's finding of fact No. 8, *supra*, at [pp. 20a-21a].

Finally, in response to a request of the Commission, USL submitted its certified financial statement for the year ending December 31, 1971; and, the unaudited financial statement for the three-month period ending March 31, 1972. In so doing they stated:

> This material is being tendered at this time solely because it has been requested by the Commission, and not in support of the Commission's approval of these agreements. The record developed in these proceedings,—specifically the portion of the record dealing with the financial condition and posture of U.S. Lines,—provides ample justification for approval of these agreements.

This submission of USL led to the following observations from the opponents: either USL has had a spectacular improvement in net revenues or the statements are incompatible and unreliable; it has not been subjected to cross-examination, but, on its face, shows improvement in USL financial situation; it can in no way support any conclusion that the company is in financial difficulty; rather, the financial future of the line would seem to be one of the brightest in the American merchant marine. Without specifically commenting on the most recent data submission, Justice observed that USL is second to none competitively; has sufficient resources and management skill to deal with its temporary cash shortages, and has worked out a refinancing program with the banks.

To the proponents:

> The record which was developed on this issue * * * and which must form the basis from the Commission's findings * * * shows that USL's financial

instability is basic and will continue until adequate rationalization is forthcoming.

USL's long term debt is tremendous, and unfortunately, international trade and commerce does not wait for the rainbow around the corner. American commerce and industry at this time in our financial and economic history cannot and should not be hampered by unrealistic impediments and unnatural fears.

Regardless of the conclusions which USL's submission permits, we agree, generally, with the preliminary observations of USL, *supra*, with respect to the evidentiary status of the latest USL financial data. We therefore disregard that officially noticed material in our findings and conclusions.

In summary, even if the prognosis were that USL could remain a formidable competitor of Sea-Land, it is abundantly clear that Kidde "wants to rid itself" of USL. Certainly, Reynolds with its resources can contribute to the establishing of a financially sound and stable USL to the benefit of the shipping community, with both Sea-Land and USL operated as equal subsidiaries but separate and competitive entities owned by Reynolds—a willing and experienced company.

In addition, we have developed conditions to our approval which will ensure the separation and competitiveness of Sea-Land and USL; and if the parties should fail to fulfill the obligations under our conditioned approval, we can subsequently disapprove the agreement.

Another point on this issue which was argued by the parties is the relevance of the "failing company" principle.

First of all, this is not an antitrust case in which we must measure the evidence to the strict standards of that principle, if indeed it is applicable here. Although we do find on the record that USL's financial problems are fundamental, in view of our reasoning set forth, *supra*, our conclusions would not be materially altered by a finding that USL is in sound financial condition.

Such a circumstance bears no guarantee as to its longevity and would not alter Kidde's intentions as to its holdings in USL. Furthermore, the record establishes that for Kidde the only options have been the sale to Reynolds or disposition of the USL assets under the provisions of the supplemental agreement. Investment bankers searched for a buyer for USL but found no responsible buyer other than Reynolds. The bankers "conveyed to Kidde the opinion that the underwriting and public sale of USL stock was well-nigh impossible because of poor market conditions and the poor operating results of the company [USL]."[A67] Thus, no other realistic offer to purchase USL as an operating entity has been made available so as to lead the Commission to any different view as to the significance of USL's financial condition.[A68]

As we said earlier, although the Commission does approve agreements of the kind before us solely on the basis of section 15 considerations, in all such cases there are mixed questions of shipping and antitrust law and policy. We must weigh the balance between Shipping Act and antitrust considerations and determine whether the activities to be approved "do not invade the prohibitions of the anti-

[A67] *Supra*, at p. [88a].
[A68] *Id.*

trust laws any more than is necessary to serve the purposes of the regulatory statute."[A69] A further consideration is whether there is an alternative course of action which would accomplish the same purpose with comparable benefits, but with lesser anticompetitive effects.

In the end, however, the balance must be weighed in favor of Shipping Act considerations. The Celler Report,[A70] in discussing the anticompetitive practices in the shipping industry, dealt specifically with this subject:

> The Anti-trust Subcommittee recognizes the unique character of the ocean shipping industry with respect to the application of the anti-trust laws. No other governments inhibit their carriers by anti-trust laws, and American ocean carriers must compete, not within the framework of our domestic anti-trust laws, but in jungle world of ocean shipping. The Alexander Committee [when drafting the Shipping Act of 1916] recognized this difficulty and granted a limited exemption to the industry from certain provisions of the anti-trust laws, conditioned upon submission to regulation by the * * * Federal Maritime Commission.[A71]

And further:

> * * * our traditional antitrust concepts cannot be fully applied to this aspect of international commerce * * * [and] any attempt to affect regulation of this commerce in a measure comparable to that

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[A69] *Isbrandtsen v. U.S.*, 211 F. 2d 51, 57 (1954).

[A70] *The Ocean Freight Industry, Report of the Antitrust Subcommittee of the House Committee on the Judiciary, 87th Cong., 2d Sess.* (1962) [The Celler Report].

[A71] *Id.*, at 382. See, also, note A45, *supra*.

applied to our domestic commerce would be highly detrimental to our essential American Flag Merchant Marine.[A72]

The proponents of the agreements have never argued that the agreements would not eliminate "some" competition between USL and Sea-Land. They claim, however, that the initial decision never comes to grips with the issue of whether any anticompetitive impact would be produced by effectuating the agreements and, if so, the magnitude of the impact. Predictably the opponents have argued that the merger would threaten economic disaster for Sea-Land's other U.S.-flag competitors.

The main thrust of argument in this area is the consideration of the relevant markets within which to assess the impact of the proposed merger. We agree to some extent with the market share analysis provided in the initial decision wherein the relevant markets were identified as full containerships' service on each of the major U.S. foreign trades and the U.S.-flag submarket within each of these markets. [A73] Certainly, one of the advantages of containership service is that it is generally preferred carriage over breakbulk. Obviously the advantages offered by a merger approved (without restrictive competitive conditions)

[A72] *Op. cit.*, at 13.

[A73] The Department of Justice 1968 Merger Guidelines provides the following standards:

> 3. *Market Definition.* A rational appraisal of the probable competitive effects of a merger normally requires definition of one or more relevant markets. A market is any grouping of sales (or other commercial transactions) in which each of the firms whose sales are included enjoys some advantage in competing with those firms whose sales are not included. The

would undoubtedly lead to sailing frequencies producing an advantage in cargo carriage affecting other U.S.-flag lines. Our point here is that the unmistakable thrust of the findings contained in the initial decision is that the merger *as proposed* would result in the elimination of the competition of USL and would insure Sea-Land's position as a dominant carrier in the U.S. foreign trades, with the same rationale applying equally to the arrangements under consideration in the charter proceeding. For example, in discussing Sea-Land's containership operation (generally recognized as the largest in the world) the Chief Administrative Law Judge stated:

[A73] (Continued)

advantage need not be great, for so long as it is significant it defines an area of effective competition among the included sellers in which the competition of the excluded sellers is, *ex hypothesi*, less effective. The process of market definition may result in identification of several appropriate markets in which to test the probable competitive effects of a particular merger.

A market is defined both in terms of its product dimension ("line of commerce") and its geographic dimension ("section of the country").

(i) *Line of commerce.* The sales of any product or service which is distinguishable as a matter of commercial practice from other products or services will ordinarily constitute a relevant product market, even though, from the standpoint of most purchasers, other products may be reasonably, but not perfectly, interchangeable with it in terms of price, quality, and use. On the other hand, the sales of two distinct products to a particular group of purchasers can also appropriately be grouped into a single market where the two products are reasonably interchangeable for that group in terms of price, quality, and use. In this latter case, however, it may be necessary also to include in that market the sales of one or more other products which are equally interchangeable with the two products in terms of price, quality, and use from the standpoint of that group of purchasers for whom the two products are interchangeable. (Department of Justice Merger Guidelines, issued May 30, 1968 § 3.)

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It was estimated that during 1971 Sea-Land would carry 21 percent of the U.S.-flag container cargo without merger, 60 percent with the merger on Route 5-7-8-9; on Route 10, 26 percent without the merger and 35 percent with the merger; on Route 12, no cargo without the merger and 100 percent with the merger; on Route 29, 51 percent without the merger and 87 percent with the merger. In 1974, the estimates were as follows: Route 5-7-8-9, 29 percent without the merger and 66 percent with the merger; Route 10, 33 percent without the merger (data unavailable under the merger); Route 12, none without the merger and 59 percent with the merger; and Route 29, 41 percent without the merger and 53 percent with the merger.

* * * The foregoing statistics present a good picture of the services of both Sea-Land and USL, but whereas the lines may think a better utilization of vessels would result from the merger, that would be a matter primarily for their benefit and does not satisfy the pronouncement of the Commission that an agreement such as this must be "required by serious transportation need, necessary to secure important public benefits."[A74]

With this conclusion we do not entirely disagree; and we also agree with most of the findings and conclusions in the initial decision relating to the justifications offered for the proposed merger. The salient point is, however, that we are not approving the "proposed merger."

What the Chief Administrative Law Judge did was to test the proposed merger in light of the *Svenska* case, and he found the criteria of that case not to be met. What he

[A74] *Supra*, at pp. [64a-65a].

did not do was to test an alternative course, e.g., the modified agreement we are approving herein. Although there is some discussion in the initial decision of the possibility of an independent USL under the merger as proposed, the Chief Administrative Law Judge dismissed that result as unfeasible. He observed:

> It is urged that under the merger USL will continue as a viable company. This position must be taken with a grain of salt. On the one hand, it is maintained that USL will go on its merry way after the merger, buttressed by financial help from Reynolds, but on the other hand Reynolds let it be known at the hearing that if USL got in the competitive way of Sea-Land it would have to yield. Reynolds' witness did say that the company would accept as a condition to approval the requirement that USL be continued as a viable company. It is very doubtful, however, that it would be practical to police this type of situation to complete satisfaction of everyone, including the Commission. It does not seem, therefore, that the prospects for a viable USL would be too bright.[A75]

We arrive at the opposite conclusion.

We find the benefits to be derived from the agreement as modified and conditioned by us to be sufficiently desirable as to render it acceptable where the Chief Administrative Law Judge found the proposed agreement unapprovable.

We find a substantial transportation need for such an approved agreement which will, in turn, secure important public benefits for the commerce of the United States.

[A75] *Supra*, at p. [78a].

By virtue of the agreement in the form herein approved, and the conditions we attach thereto and for the reasons the Chief Administrative Law Judge found the benefit inuring mainly to proponents, we find the public interest to be the main beneficiary to the agreement as we approve it.

In weighing the balance between the benefits to be derived from the proposed merger and the anticompetitive effects, the Chief Administrative Law Judge found the latter to be the weightier. He concluded further that the benefits claimed would inure more to the proponents than to the public interest. Our differences with him are not in his judgment as to that balance, but rather as to the alternatives placed in the scale. Whereas the Chief Administrative Law Judge rejected any third possible result, we consider three possible outcomes of this proceeding: disapproval, approval of the proposed merger agreement, and approval of the agreement as modified and conditioned herein by us. Inasmuch as we reject the agreement in the form proposed, the comparison for us is between disapproval and the modified agreement.

As we discussed at length earlier, simple disapproval is completely unacceptable. The ramifications of such an action are totally antithetical to the attainment and maintenance of healthy competition in our foreign waterborne commerce. We conclude that the public interest will best be served by the continuance of USL as a whole entity, able, through willing and available financial assistance from Reynolds, to achieve financial stability. The result will be the participation in our commerce of USL as a company with the resources to offer competitive services to the shipping public. Mere disapproval of the proposed agree-

ment will create a void in the American merchant marine and in the field of international competition in general which will increasingly leave the American importer and exporter at the mercy of well financed foreign maritime consortia and reduce the available competition for our government-controlled cargo.

Accordingly, our decision and the reasoning set forth in our Order of June 7 represents our determination to provide for our commerce the benefits to be derived from an agreement maintaining USL as a strong, independent and competitive U.S.-flag carrier.

Our approval herein is coupled with the imposition of restrictive conditions which will ensure that result and effectuate our resolve to prevent any possible dismemberment of USL.

We therefore approve the agreement as modified and conditioned herein and hold that the supplemental agreement is within the purview of section 15 but, because of our other action herein, it is disapproved.

With respect to the promissory note[A76] the Chief Administrative Law Judge concluded that, if he were correct in his premise regarding the supplemental agreement (i.e., that it is not subject to section 15), it follows that the promissory note is not subject as well. Again, he offered his thoughts on the question should the Commission disagree. In Appendix "B" he concluded that the ". . . actual market value had to prevail over possible value were the

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[A76] This is in an eight percent note of Reynolds to Kidde for $65,000,000, dated and bearing interest from November 9, 1970, and maturing either in 1974 at the earliest, or in 1976 at the latest.

company one of sound financial standing at the time the agreement was made."

The promissory note is an integral part of the transactions of the proponents. As such it, too, is within the purview of section 15. *For the reasons stated in Appendix* "B" to the initial decision and because it is an indispensible part of the modified agreement approved herein, the promissory note is approved also.

It should be understood that our reasons for approval of the proposed agreement as modified by us with the restrictive conditions attached, apply to our consideration of the charter agreement (No. 9827). As we have explained and as shall be shown further, *infra*, our determination that USL continue as a viable and independent carrier obviously precludes approval of the charter arrangement which was under consideration primarily in Docket No. 69-56.

As noted above, our Order of June 7, 1972, set forth numerous conditions which we proposed to attach to the approval we were prepared to give to a modified agreement, and afforded the parties an opportunity to file memoranda containing their views on those conditions as well as suggestions for other conditions.

In response many of the opponents collectively demonstrated a fear that USL would not be maintained as a strong and independent U.S.-flag carrier. They implied generally that any proposed common ownership of USL and Sea-Land by Reynolds, in and of itself, is sufficient to destroy the competitive independence of USL; that Reynolds as a common parent of both lines must consider the competitive impact of the operations and plans of the

one subsidiary on the other; that it strains credulity to believe that Reynolds can own 100 percent of the stock of both lines and yet provide each benevolent encouragement to take cargo from the other, and that the Reynolds/Sea-Land goal is to dominate those markets which Sea-Land serves and to move into new markets. They warned us that the Board of Directors of Reynolds will be as closely attentive to the plans and operations of USL as it has been to those of Sea-Land and surely would be aware of those instances where the competitive plans of one threaten to diminish the market shares and revenue levels of the other. It was even argued that any assumption that the independence of USL from Sea-Land can be maintained by Commission supervision, plus a court-appointed director, "are a testament to a faith in mankind not usually shown by a regulatory agency."

Here we find the oft stated, broad, generalized and unproven arguments that private American enterprise is inherently predatory, greedy and destructive of its own, best, enlightened, long-range interests.

The view is glibly stated that the competitive American system will simply gobble up its own children to fatten its coffers no matter how talented, productive or profitable those children may be as members of the family. This we do not accept.

Proponents, on the other hand, tell us that it is the intention of Reynolds to operate USL as an energetic and effective competitor not only with foreign competition but with American-flag as well, including Sea-Land. Both Sea-Land and USL, we are told, will be operated as equal sub-

sidiaries without preferences between them and without serious problems to Reynolds. USL adds that "the assurance that [it] will be maintained as a competitive, independent steamship company, which will receive financial support and stability, more than outweighs any possible anticompetitive effect."

The conditions which we are attaching to our approval we conclude are sufficient to allay the fears expressed by the opponents and to insure that the proponents implement their professed intentions. Further, our conditions provide that a breach of any of the conditions may provide grounds for disapproval of the agreement and divestiture of Reynolds of USL stock; and our disapproval of the supplemental agreement prevents its implementation upon such an eventuality.

Justice views the goals of our Order as (1) the financial revitalization of USL; (2) continuation of U.S.-flag participation in international competition; and (3) the preclusion of USL's dismemberment through the terms of the supplemental agreement. They claim the first two objectives are based on assumptions unsupported by substantial evidence of record and the final point will be governed by future activity in the courts.

As to the first point, we find there is sufficient evidence in the record to support the conclusion that USL's financial condition is not secure.[A77] Further, however, the financial plight of USL is not crucial to our decision, because as we said, *supra*, Kidde is determined to terminate its interest in USL and is unlikely to reverse its position based upon

[A77] See notes A64, A65 and A66, *supra*, and accompanying text.

an improvement, possibly transitory, in USL's posture. Consequently, there is no doubt that USL must either stand on its own, receive financial support from another source or be dismembered.

The latter possibility must be avoided or all the contentions in this case in support of strong competition within the U.S. merchant marine will be vitiated. Dismemberment is utterly unacceptable and would produce the contrary result to that desired by all parties—continued healthy competition.

As to the first possibility—USL being self-contained—we have shown that the probability of success is not sufficiently favorable: but in any event, USL's stock must be purchased from Kidde, and the offer by Reynolds herein is the one substantive offer which has been made to purchase USL and maintain it as a competitive entity.

The second point made by Justice in response to our Order is perplexing. The purport of Justice's entire case is that the outcome of this proceeding must be such as to preserve a proper level of competition among U.S.-flag carriers. At the same time, however, Justice repeatedly argues that the status of U.S.-flag competition in international ocean commerce is either of no importance or irrelevant to this case. Justice contends that one of the fundamental considerations is the scope of competition for U.S. government controlled or impelled cargo for which the competition of foreign-flag carriers is strictly limited by law.[A78]

[A78] See, e.g., U.S. Department of Justice Reply to Exceptions to the Examiner's Initial Decision, Docket No. 70-51, March 6, 1972, pp. 9-10.

Granted that U.S. government cargo provides a substantial and vital source of revenue for our carriers, the availability of commercial cargo for our merchant fleet is vital not only to our vessel operators but to the overall trade and commerce of the United States. Section 15 of the Shipping Act is not so limited as to permit the Federal Maritime Commission, when acting on an agreement, to disregard all interests except those in "captive" government cargo. Our authority to approve, disapprove, or modify an agreement is based upon a broad range of interests and considerations: carriers, shippers, exporters, importers, ports and, above all, the public interest in the general welfare of a viable American merchant marine and its ability to serve competitively in the foreign waterborne trade and commerce of the United States.[179]

The trade and commerce of the United States depends greatly on the ability of our commercial enterprises to compete in foreign markets and to obtain the use of certain foreign products. A great part of this is accomplished by use of ocean transportation. If we are forced to rely on foreign-flag operators and resulting conferences of foreign-flag composition, the effects may be highly inimical to the commerce of the United States, and our regulation of our

[179] Section 15, second paragraph, states in pertinent part as follows:

> The Commission shall by order, after notice and hearing, disapprove, cancel or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between *carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be contrary to the public interest,* or to be in violation of this Act, and shall approve all other agreements, modifications, or cancellations * * *.

foreign waterborne transportation will be increasingly the regulation solely of foreigners whose overwhelming major concern, too often, is different from that of the United States. Some of the most intense competition in ocean commerce is that for commercial liner cargo; and there are strenuous competitive efforts being made in that area, especially by foreign-flag carriers operating not individually but in the form of consortia, mergers, and other types of corporate combinations involving large-scale aggregations of capital. Furthermore, these consolidations are precipitated both by commercial action and at the direction of foreign governments.

Consequently, we cannot concede our ocean trade to foreign-flag interests by eliminating factors of international competition from our consideration under section 15 of what is best for the competitive well being of the American merchant marine. The maritime policy of the United States is not formulated by the Congress and our courts with such an intention. We need only look at the Merchant Marine Act of 1970[A80] and the circumstances surrounding

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[A80] Public Law 91-469, 84 Stat. 1018. Earlier government aids provided by Congress to the U. S. merchant marine include The Shipping Act, 1916 (39 Stat. 728); Merchant Marine Acts of 1920 (41 Stat. 988) and 1928 (45 Stat. 689); Merchant Marine Act, 1936 (49 Stat. 1985); Merchant Ship Sales Act of 1946 (60 Stat. 41), and see also *The Ocean Freight Industry* (House Report No. 1419, 87th Congress, 2d session), pages 18 to 26. The need for an American flag merchant fleet was highlighted in the early part of World War I when "the breakdown in shipping facilities * * * produced tremendous increases in ocean freight rates." *The Ocean Freight Industry*, page 19. "* * * in the late summer of 1914, the United States, which had depended on foreign flag vessels to carry roughly 90% of its foreign trade, was confronted with a critical shipping crisis." *Ocean Transportation*, McDowell & Gibbs, 1954, page 412.

its enactment to understand the import of our nation's philosophy in this area. [A81] This is but one of a series of congressional enactments.

We do, however, recognize the importance of maintaining healthy competitive conditions with respect to the carriage of government impelled cargo; and in the conditions to our approval we deal specifically with this matter. Condition III.B. prohibits USL and Sea-Land from placing any limitation on competition between them for government cargo, and Condition IV.A. reminds the parties of the seriousness of our intention to insure against variance from that restriction.

The third point made by Justice with respect to our June 7 Order is that the preclusion of the dismemberment of USL can be accomplished through court action. What we have already said concerning the supplemental agreement is a full response to this contention. Our approval herein of the modified agreement and disapproval of the supplemental agreement resolves the problem completely. Surely injunctive relief may be issued, as well as other legal restraints, against the supplemental agreement. But our main concern is that of a maritime nature and the continuance of USL through commercial management and economic decisions, and they should preclude actions in the courts.

One further contention in response to our Order needs to be mentioned here. The opponents allege that our pro-

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[A81] "The restoration of our merchant fleet to a position of leadership on the world's oceans is one of our most urgent tasks. Our merchant ships are essential parts of our economic and defense systems * * *." *Presidential Proclamation No. 3976*, April 6, 1970; Fed. Reg. Vol. 35, No. 68, April 8, 1970.

posed action amounts to an approval of the proposed merger but a rejection of all grounds for approval. It is said that the asserted claims for approval will be negated because the result will be a viable independent USL and not the combination originally sought.

The discussion, *supra*, of our disagreement with the conclusions of the Chief Administrative Law Judge lays that argument to rest. It suffices to say at this point that, as demonstrated by the entire foregoing elucidation of our reasoning, there is ample basis in law and fact for our ultimate conclusions.

Before proceeding to a discussion of the conditions to our approval, several additional issues raised by the parties warrant comment.

Both Hearing Counsel and AEIL raise a jurisdictional question claiming, in substance, that the proposed conditions would result in Sea-Land ceasing to be a party to the agreement and, consequently, the agreement would no longer be one between common carriers by water and subject to Commission scrutiny.

The proponents correctly point out that the merger agreement provides that if the charter agreement is disapproved, the merger agreement continues in full force and effect.[A82] Both Sea-Land and USL are parties to these agreements. The fact that the charter is not approved here does not impair the obligations and duties under the merger agreement (9827-1) of Sea-Land and USL who, under the common control of Reynolds, will be indispensable parties

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[A82] See note A7, *supra*, for the text of Article 6.3 of the proposed merger agreement.

to the *res* of the merger agreement which is approved but modified and subject to conditions imposed by us.

Further, whether or not Sea-Land is technically a party to the agreement is not relevant. As we have already noted with respect to the supplemental agreement,[A83] the fact that Reynolds and/or Kidde may be the only apparent parties does not preclude us from either looking beyond the signature and determining the true parties in interest, or from finding Reynolds and/or Kidde to be persons subject to our jurisdiction in view of their immersion in shipping matters.

Seatrain raises a question about the participation in the substantive issues by Commissioner Day. The contention revolves around his position that the Commission lacks jurisdiction over the agreements under consideration; however, the Commission has initially voted 4-1 on this issue and we are not cited to any legal support which would bar Commissioner Day from then proceeding to participate in proper conclusions on the merits. The Commission has a responsibility to reach for clear-cut conclusions on all matters that are brought before it for adjudication and guidance.

Whatever an individual's view may be on jurisdiction, he may well contribute to the effort of his colleagues to resolve the paradoxes and dilemmas which are the everyday fare of the judicial process.

The "jury" in this case has labored long and arduously and it has reached, despite a wide variety of differences, a majority opinion that offers a solution in keeping with logic and responsibility. Certainly this is far more to be

[A83] See, *supra*, at pp. [128a-135a].

desired in the service of justice through law then would be an insoluble impasse among the members of the Commission.

Certain unions[A84] responded to our Order in the same vein as opponents. NMU[A85] submitted conditions for our consideration;[A86] SIU[A87] filed a motion for leave to intervene (they were a party to the charter proceeding), arguing that the Commission lacks jurisdiction to impose provisions dealing with labor relations. NMU attacked the motion of SIU

[A84] International Longshoremen's Association, AFL-CIO; National Marine Engineers Beneficial Association, AFL-CIO; and International Organization of Masters, Mates and Pilots, AFL-CIO.

[A85] National Maritime Union of America, AFL-CIO.

[A86] Their proposed conditions are:

> 1. It is further ordered that USL will continue to recognize NMU as the exclusive bargaining representative for the unlicensed personnel employed aboard its vessels including any replacements or additions thereto, subject to any appropriate rulings by the NLRB or courts of appropriate jurisdiction.
>
> 2. It is further ordered that USL will continue to operate its vessels under the terms and conditions of the collective bargaining agreement now in effect between NMU and USL and at the expiration of said collective bargaining agreement, upon receipt of proper notice, USL will bargain with NMU with respect to terms and conditions of subsequent collective bargaining agreements, subject to appropriate rulings by the NLRB or courts of appropriate jurisdiction.
>
> 3. In no event shall any USL vessel be transferred, sold or chartered to Sea-Land.
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> 4. It is further ordered that in the event a subsequent determination of the NLRB or court of appropriate jurisdiction holds that NMU is not entitled to be lawfully recognized as the exclusive bargaining representative for the licensed seamen employed aboard USL vessels, this matter will revert to the Commission for the purpose of adopting appropriate protective provisions which will prevent economic harm to the affected seamen and their pension fund.

[A87] Seafarers International Union of North America, Atlantic, Gulf Lakes and Inland Waters District.

on the basis that it fails to demonstrate a substantial interest and is untimely. Some of the positions raised by the labor interests were covered in the initial decision[A88] and were similar to those posed by opponents in response to our Order or are unnecessary for resolution in this proceeding.

As to those conditions[A89] proposed by NMU, the first two seek to insure the continued status of that union as the collective bargaining representative for USL's unlicensed seamen. Although proponents have no objection to them, both are "subject to any appropriate rulings by the NLRB or courts of appropriate jurisdiction." We think that these proposed conditions are unnecessary since jurisdiction over these particular matters would primarily rest with the NLRB or the courts. The third condition proposed would preclude any USL vessel from being transferred, sold or chartered to Sea-Land. We have adequately covered such a contingency in the conditions required for approval. The fourth proposed condition simply invites issues of conflicting jurisdictional problems between the NLRB and the Commission. In any event, proponents have stated to us ". . . it has been and is our position that the acquisition should have no adverse impact on NMU or any other union." In view of the arguments raised we hold that it is unnecessary to impose any restrictive conditions affecting the unions. It is our opinion that union leadership and the rank and file merchant marine are eminently in a better position with an existing USL, viable and active as an employer and contributor to union sponsored retirement and other union welfare funds or activities.

[A88] Initial Decision, pp. [38a-41a], *supra*.

[A89] See note A80, *supra*.

In summary, we have fashioned in our conditions precise limitations upon the future intercorporate relationships among Reynolds, USL and Sea-Land while reserving our jurisdiction to provide a continuing surveillance over their operational and other activities. In addition to those reasons stated in our Order of June 7, 1972, we are recognizing the dramatic effects of the new technologies in ocean shipping. By our imposition of restrictive conditions we are offering an assurance that USL will be maintained as a competitive, independent steamship company with financial support. It will free USL from the Kidde influence which has not shown an interest or desire to advance the economic assistance necessary to benefit USL or show an effort to actively participate in our waterborne commerce.

If opponents' aim is to perpetuate a financially distressed competitor we find and conclude such is not in the public interest. If opponents' aim is to achieve a dismemberment of USL as a viable competitor we find and conclude such aim is not in the public interest. If opponents' aim is to prevent a consolidation of the operations of Sea-Land and USL into a massive, single operation, we agree with that aim and have adopted conditions and restrictions which will effectively prevent that result. If opponents are sincere in their statements that they welcome competition from a financially healthy and independent USL then we have effectively assured that desired result.

3. THE CONDITIONS TO BE IMPOSED

After reviewing the submissions by the parties to our proposed conditions we will approve the acquisition by RJI as a presently wholly-owned subsidiary of R. J. Reynolds

Industries, of all of the outstanding common stock of USL, subject to the following conditions:

I. The Stock of USL transferred to RJI is to be held by RJI to insure the independence of USL.

A. There shall be no substitution for RJI as the owner of USL stock without FMC approval. Reynolds/RJI shall not sell, pledge or in any way encumber the USL stock.

B. The corporate ownership among Reynolds, RJI and USL shall be irrevocable except as may be ordered by the FMC.

C. This approval shall be subject to constant surveillance and to review by the Commission at least every 5 years with records and reports remaining confidential.

D. Reynolds/RJI acknowledge that the FMC can and may require them to divest themselves of USL stock upon order of the FMC for breach of any condition herein and agree to comply with any such order of divestiture.

E. Reynolds/RJI shall not sell or otherwise dispose of, or encumber by lien, mortgage, or otherwise, the assets of USL except upon approval of the FMC.

F. No scheme or device may be adopted by USL, RJI, or Reynolds which would result in the distribution or dissipation of the assets or revenues of USL, except that reasonable cash dividends on USL stock may be paid but in no event to exceed net operating profits of USL for the prior corporate fiscal year, based upon sound accounting principles and after adequate provision for debt servicing.

II. All expenses, debts and financing of USL operations existing at the time of the consummation of this

transaction shall be assumed by Reynolds; and Reynolds in the spirit of presentation made in this proceeding will assist USL in future financing.

A. No loans or advances of funds by Reynolds to USL or RJI for the benefit of USL may be secured by the existing assets or future revenues of USL, or by USL voting stock or evidence of voting interest in USL, and USL shall notify the FMC of any intercompany loans and the terms thereof.

III. USL is to be operated as an independent carrier in all respects in competition with Sea-Land. Upon the adoption by USL and or Sea-Land of any alteration in their competitive relationship, the FMC, on its own motion, or on petition of a party or person having an interest, may institute a proceeding to determine whether such alteration is consistent with the terms and conditions herein.

A. McLean Industries and Sea-Land shall not have any employees, officers or directors in common with RJI and or USL, except with respect to "public members" of the Boards of Directors.

1. One director of USL and one director of Sea-Land shall be a "public member": persons experienced in maritime transportation and corporate finance, who shall be appointed by the Chief Judge of the U. S. Court of Appeals for the District of Columbia or another independent source to be selected by the FMC. These directors shall also be members of the Executive Committees of the Boards of Directors, and shall report to the FMC as to any and all competitive service decisions and as otherwise may be required by the FMC.

B. USL and Sea-Land shall establish and maintain separate bids and tariffs for the carriage of

military or other United States Government-controlled or generated cargo.

C. USL shall be a member in its own name in conferences, pools, and other agreements approved by the FMC or hereafter filed for approval except as otherwise authorized by the FMC.

D. USL and Sea-Land may not have common soliciting or general agents, attorneys or accountants, except to the extent authorized by the FMC.

E. USL and Sea-Land shall not share in any pool percentages except as authorized by the FMC.

F. USL and Sea-Land shall not enter into any ship sale, ship charter, space charter, equipment interchange, transshipment, or any similar type of arrangement, or any type of service rationalization arrangement with each other without FMC approval.

IV. USL, RJI, Reynolds, Sea-Land and McLean Industries shall submit to the FMC, in form as prescribed by the FMC, semiannual reports verified by the president and the treasurer or secretary of such corporations with respect to the adherence to all the conditions contained herein.

A. The FMC shall have access at all times to all records of USL, RJI, Reynolds, Sea-Land and McLean Industries with respect to the maintenance of these conditions, particularly, but not limited to Condition III.B.

V. Any party or any person having an interest in the subject matter may at any time petition the FMC for modification of any of these conditions, and jurisdiction shall be retained by the FMC to amend, modify, or cancel these conditions in part or in whole pursuant to such petition or on the Commission's own motion after notice and hearing when required.

VI. As used in these conditions, "Reynolds," unless otherwise identified, means R. J. Reynolds Industries, Inc. Sea-Land, Reynolds Tobacco, Reynolds Industries, McLean Industries, RJI and USL mean those companies so identified; provided, that common employees among these companies shall not be prevented except as provided in Condition III.A. No subsidiary, parent, successor, or other organizations or corporations similarly or otherwise affiliated with Sea-Land, Reynolds Tobacco, Reynolds Industries, McLean Industries, RJI and USL shall be used or shall take any action to obstruct, prevent or otherwise impair the requirements of these conditions.

VII. Reynolds undertakes to place all eight SL7s under United States documentation as rapidly as the vessels are delivered. With the exception of the eight SL7s, and with the exception of other vessels now owned by Reynolds or Sea-Land already built or converted outside the United States and now documented under the laws of the United States, United States Lines and Sea-Land shall operate only vessels built and or converted in the United States, documented under the laws of the United States, and manned by American crews, provided that existing operations of foreign-flag vessels may be continued but not beyond a period of two years from date. Further provided, subject to Federal Maritime Commission approval, Sea-Land and United States Lines shall not be precluded from using foreign-flag vessels for feedership or like operations under circumstances where, because of the economics of the situation or the laws of other countries, the use of such foreign-flag vessels is required.

For the most part, these conditions speak for themselves. In some respects, however, they require amplification.

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Condition III as originally proposed to the parties was that "USL is to be operated by RJI as an independent carrier in all respects in full competition with Sea-Land." Proponents consider that amplification of the words "full competition" is necessary.[A90]

[A90] To this end, they construe those words to include:

1. Full competition means giving USL the full ability to compete in every way.

2. Full competition does not necessarily mean ship-for-ship or type of ship for type of ship on each and every service that Sea-Land operates.

3. USL would not be required or prohibited from instituting a new service just because Sea-Land was already in that particular service, assuming of course the institution was consistent with good business judgment; for example, Sea-Land now serves Alaska—USL does not and full competition does not require USL to serve Alaska. However, if it is conceived that in the judgment of USL, Alaska proved an attractive market albeit in competition with Sea-Land, USL would not be prohibited from instituting such a service simply because Sea-Land was serving that area also.

4. Full competition does not mean wasteful duplication merely to maintain competition.

5. Full competition will be consistent with revenue pooling agreements and conferences.

6. If a service is available, which neither carrier now serves and two carriers can serve, this should present no problem if both desire the service. If, however, it is patently obvious that the route will support only one carrier, a business judgment will be necessary considering all factors if both carriers seek the same route. Otherwise wasteful and perhaps suicidal competition could result contrary to the best interest of the commerce of the United States.

7. Where both carriers serve the same Trade Route, it will not be necessary for each carrier to serve each and every port.

8. This clause does not "lock" either company, at the present time in any particular service posture. The key to success and the advantage of operating without subsidy is flexibility. It has been agreed that no routes now served by the carrier will lose service as a result of the acquisition.

9. Full competition will not be deemed to prevent elimination of wasteful duplication of service and effort that can be approved under condition III.D.

We think the opponents correctly view some of the amplifications posed by proponents as a reservation on their part to decide when competition between Sea-Land and USL is "wasteful duplication." Under these views proponent can conceivably reach into activities contrary to the very concept of our approval; and, their independent action would affect the very essence of our decision to require that USL be maintained as a viable and independent entity.

As is made clear in our previous discussion of the merits and in the specific conditions, we are approving a modified agreement which is subject to the continuing scrutiny of the Commission. This may seem to be a statement of the obvious in view of our statutory obligations under section 15. In view, however, of the contentions of opponents as to our basic jurisdiction, we repeat here what we set forth more fully, *supra*. Not only do we have jurisdiction over the proposed agreement, but regardless of the definition of our jurisdiction over "mergers," we are approving an agreement herein which is of a continuing nature and clearly within at least the conceded scope of section 15.

Consequently, we intend to exercise, as a condition of our approval, surveillance to insure that USL is to be operated as an independent carrier in *all* respects in its competition with Sea-Land.[A91]

Accordingly, we do not adopt *any* amplifications of "competition" as construed by proponents. We are reserving to our discretion all decisions "upon the adoption . . . of any alteration in (the) competitive relations," with, of

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[A91] We have further provided in condition III.A1 that the public members to be appointed report to us any and all competitive service decisions, *supra*, at p. [164a].

course, notice and opportunity for all parties to be heard.

As to the matter of notice and hearing, some parties raised questions as to its applicability with respect to certain of the conditions. It should be fully understood that wherever an action by the Commission is contemplated by the conditions, we will act pursuant to the notice and hearing requirement as required by law.* Authorizations by the FMC required in any of the conditions will not be unreasonably withheld, provided only that they do not unreasonably impair the intent or effect of this acquisition.

Our failure to address ourselves to any particular comment in response to our Order of June 7 is neither an agreement with nor disapproval of such comment as it may seek to amplify or interpret the conditions we have adopted.

Finally, we have carefully weighed all of the positions of the many parties to these proceedings, and consider it unnecessary to repeat the extensive findings and conclusions of the Chief Administrative Law Judge. We find, in the main, that those differences are primarily only judgment factors. Our principal difference, of course, is that we would permit the acquisition but *only* with the restrictive conditions imposed. The nature of this departure makes it unnecessary to point sentence by sentence to differences in our decision which may be in conflict with some findings or conclusions contained in the initial decision. In addition, we find it equally unnecessary to repeat the many detailed arguments contained in the numerous pleadings we have considered in reaching our decision (many of which are repetitious and covered in the initial decision). Upon careful examination of the record, and the briefs and argument of counsel, we conclude that the Chief Admin-

istrative Law Judge's disposition of those issues is well founded and proper.

Again, we depart from his ultimate conclusion only to the extent that on the basis of the record, we have modified Agreement No. 9827-1 and, as modified, given it our approval conditioned upon proponents' evidence of acceptance within 30 days.

Accordingly, except as noted herein, we adopt the Chief Administrative Law Judge's initial decision as our own and make it a part hereof. This decision is not a major federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969.

Dissenting and Concurring Opinion of Chairman Helen Delich Bentley and Commissioner Ashton C. Barrett

The majority would approve the "merger," but only upon the imposition of "conditions" which in their view are designed to "enable USL to remain a viable and independent company." In doing so, the majority ignores the lengthy record before it, misapplies the governing principles of the applicable law and ultimately proffers a "solution" that is at best exceedingly impractical and at worst totally unworkable. Based upon a relatively few questions posed during the course of the hearing, the majority have thrust aside a carefully compiled record and decided to approve a stock acquisition by Reynolds which leaves it as the parent of two presumably independent and competing subsidiaries—a probable "first" in the realm of mergers.

It is unnecessary to burden our discussion here with undue length since we agree with virtually all of the find-

ings of the Chief Administrative Law Judge, and commend him for his patient and painstaking sifting of the facts in this case.

Carefully considered, the record amply demonstrates that the Chief Administrative Law Judge correctly concluded that the proposed merger should not be approved. He tested the proposal in light of *FMC* v. *Svenska Amerika Linien*, 390 U.S. 238 (1966)[A92] and ultimately found that most of the results claimed as justification for the proposal "are in reality for the benefit of Sea-Land alone." (See p. [86a].)

These very same considerations were summarily ignored by the majority. Indeed, in an easy, quick way they put these crucial considerations to one side.[A93] The majority puts out of sight, as it were, what is basic to a disposition of this case, namely the required public benefits, transportation need, and or valid regulatory purposes needed for justification for the proposed merger. What emerges in their decision is the completely unwarranted expansion of a concept—that of making USL a separate and viable company under Reynolds into a vehicle used to justify their actions. The very way in which the "concept" entered the case—by way of a suggestion by counsel at oral argu-

[A92] In that case the Court upheld the Commission's requirement that conference restraints which interfere with the policies of antitrust laws be approved only if the conference can bring forth such facts as would "demonstrate that the (re-traint) is required by a serious transportation need, or in order to secure important public benefits." All parties to the merger proceeding herein agreed that the Commission's test applied. (See p. [63a].)

[A93] As the majority puts it, "It is apparent, therefore, that although we generally accept the findings of fact in the initial decision, we view some in an entirely different perspective." (See p. [124a].)

ment [A94]—is enough to characterize it as an "afterthought" by proponents of the merger. Without further investigation to determine the impact of the suggestion upon the public interest, the majority has seized this "bootstrap" in an attempt to squeeze an overly large foot into a very small shoe.

While the lack of record support *alone is sufficient ground* to reject the majority's decision, a few observations on the majority's reasons for their action will seem to place in proper perspective the magnitude of their error.

The majority is convinced, although without supportive findings, that USL is in financial distress and requires financial backing, which in its view can only be supplied by Reynolds. But, the fact is that USL is a very efficient and respected operator who enjoys "a strong following of shippers and importers." The record clearly establishes that USL is second to none competitively with sufficient resources and management capability to deal with "peaks and valleys" of temporary cash shortages. If USL were in true financial straits, banks would not have carried out negotiations for mortgage refinancing programs if they were not convinced that USL was a viable company with a prosperous future. The conversion from a breakbulk to full container operator in less than three years; the creation

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[A94] As counsel for the proponents put it, ". . . this Commission should come out with a ruling in the future which would allow Reynolds to acquire U.S. Lines and would require Reynolds to continue to operate U.S. Lines as a viable company in its existing service as a competitive company with Sea-Land, as an equal subsidiary with Sea-Land, then Reynolds would agree to accept this condition." (Transcript, Oral Argument, pp. 223-224.) This statement was the subject of motions to strike which were, like so many other parts of the record, apparently ignored by the majority.

of the finest full containerships presently operating; the initiation of the first tri-continental or seabridge service linking Europe, the United States and the Far East—all indicate that USL has sufficient resources and management skills to extricate itself from its present or future short term cash shortages.

The majority decision is devoted chiefly to the task of explaining why it will not decide any of the substantive issues raised by this case, and consists mainly of the extended repetition of the proposition that affords the real motivation for their approval, i.e., "Kidde wants to rid itself of USL." (See, e.g., pp. [137a, 139a, 142a, 153a, 162a].) The majority has seized upon the Chief Administrative Law Judge's statement that, "Kidde wants to rid itself of the child because the returns of the latter do not satisfy the financial requirements of the parent." [A95] We cannot agree to decide this case, let alone reach the majority's unsupported "alternative solution" on any such slim ground.[A96]

Moreover, in our view the majority's alternative solution goes too far. The majority say, "Consequently, there is no doubt that USL must either stand on its own, receive financial support from another source or be *dismembered.*" (See p. [154a], emphasis ours.) So far as this record is concerned, USL still maintains a healthy competitive position, and its so-called dismemberment can readily be prevented by the disapproval of the supplemental agreement alone. That agreement as found by the Chief Administrative Law

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[A95] See p. [80a].

[A96] As late as December 1970, Kidde was claiming that it could not and would not make any further loans to USL or guarantee the obligations of that line. However, since then Kidde has made advances of $9 million to USL.

Judge "is primarily for the benefit of Kidde and Reynolds, not for the benefit of the public." (See p. [87a].) The majority disapproved that agreement, and it should have stopped there.

Furthermore, the majority as grounds for approval are concerned over the protection of U.S. flags from the "intense" competition offered for commercial liner cargo by the foreign-flag interests operating in the forms of consortia, mergers and other types of corporate combinations. (See p. [156a].) If this is of real concern, the obvious answer would be the *unconditional* approval of the merger which would have placed the USL fleet at the disposal of Reynolds and Sea-Land, thereby creating a single entity for use against foreign competition. The majority, instead, seems far more concerned with the preservation of competition *between* U.S.-flag lines—a course which does not quite square with its preoccupation with foreign-flag competition. Be that as it may, the Chief Administrative Law Judge found that even if the proposed merger were approved and Sea-Land were provided the added strength of USL's fleet, the resulting combination would not have any appreciable effect on the foreign-flag containership competition—which finding affords yet another instance of the majority's ability to ignore or distort salient portions of the record in this case. The majority's ultimate conclusion that, "Consequently, we cannot concede our ocean trade to foreign-flag interests by eliminating factors of international competition from our consideration under section 15 of what is best for the competitive well being of the American merchant marine" is somewhat suspect. (See p. [156a].) We simply cannot see how the competitive well being of the

American merchant marine viz-a-viz its foreign-flag competition can be preserved by having both Sea-Land and USL operating as separate entities competing with each other.

The majority also seem to think they can "ensure" the survival of USL by placing it under the financial umbrella of Reynolds. This type of reasoning can only charitably be termed as naive. There is neither positive evidence of record nor any commitment by Reynolds that it will provide the capital requirement for acquisition by USL of new ships, additional containers or new terminal facilities. We can only wonder how much financial aid and comfort any parent can be expected to expend to finance internecine warfare within its own family. It blinks reality to argue that Reynolds, as owner of 100 percent of the stock of both lines, would encourage either one to competitively seek cargo from the other.

Even were the majority's alternative solutions desirable, the "conditions" which the majority feel are necessary to its adoption pose insurmountable administrative difficulties. How can this Commission with its limited staff not only police the day-to-day activities of the companies involved but also authorize the innumerable dealings with common soliciting or general agents, attorneys or accountants. (See condition III.D, p. [165a].) What clearly emerges from a careful review of these conditions is that the majority is trying to convert this Commission into a bureaucracy for the operation of a steamship line. Neither Congress nor the Courts have ever sanctioned such an extension of our current statutory authority. In view of the degree of "surveillance" required by the "conditions" of the majority, it is

simply not enough to provide for public directors for USL and Sea-Land to act as "watchdogs" over the day-to-day operations of the companies involved. This is particularly true when we consider the Chief Administrative Law Judge's serious misgivings over the practicability of devising effective policing measures when he was considering the far less complex situation of USL merely stripped of its containerships. (See p. [78a].) The already noted lack of staff and the myriad problems posed by the "alternative solution" of the majority would when more realistically appraised leave the Commission physically unable to cope with the inevitable steps toward cooperative operation between Sea-Land and USL. In sheer numbers alone the foreseeable mass of decisions on future cooperative matters would preclude active protest by interested parties or careful analysis and surveillance by the Commission.

While we share the majority's enthusiasm in striving to implement "progressive regulation," as spelled out in *Disposition of Container Marine Lines*, 11 F.M.C. 47 (1968) (See p. [120a]), we cannot let our enthusiasm for progress lead us into a misapplication of the statutes we administer. Much more is at stake than a tariff filing here. Since we view as inevitable the ultimate cooperation between USL and Sea-Land, there is a risk of gigantic proportions here. As each aspect of a self-contained USL operation is relinquished in favor of joint operations with Sea-Land, the prospect of restoring USL to an independent status disappears—the loser being not only USL but the public as well.

Furthermore, there is no indication that disapproval of the merger would have a pernicious effect on the American merchant marine. The Chief Administrative Law Judge

found that, "On the contrary, it would simply allow the American-flag containership operators to remain in a healthy competitive state." (See p. [85a].)

Like the majority, we too are committed to the concept of preserving competition. Competition has fostered the development by USL of the second largest containership fleet in the world. The stimulus of competition led USL to becoming a pioneer in establishing the intermodal processes which characterize today's shipping community, and it is because we simply cannot argue that the alternative solution of the majority will insure the continuance of that competition that we would disapprove the merger.

To summarize our discussion, a close study of the record fails to lend any support to the action by the majority. The pronouncements contained in the *Svenska* case, *supra*, have been ignored by the majority who have fashioned an approval of the proposed merger agreement with "conditions" that are neither workable, justified by the record, or supported by realistic application.

We would disapprove the proposed merger on the basis of the findings and conclusions contained in the Chief Administrative Law Judge's initial decision.

We concur in the decision of the majority that we have jurisdiction over the agreements under consideration and would disapprove the supplemental agreement.

/s/ FRANCIS C. HURNEY
Francis C. Hurney
Secretary

(SEAL)

[Served February 12, 1973.]

Order of the Federal Maritime Commission

FEDERAL MARITIME COMMISSION

Docket No. 69-56

AGREEMENT NO. 9827 BETWEEN UNITED STATES LINES, INC. AND SEA-LAND SERVICE, INC. (AND WALTER KIDDE & CO., INC. AND R. J. REYNOLDS TOBACCO CO., GUARANTORS)

Docket No. 70-51

AGREEMENT OF MERGER NO. 9827-1 AMONG
R. J. REYNOLDS TOBACCO COMPANY, RJI CORPORATION,
SEA-LAND SERVICE, INC.;
AND WALTER KIDDE & COMPANY, INC.
UNITED STATES LINES, INC.

ORDER

This proceeding having been instituted by the Federal Maritime Commission, and the Commission having fully considered the matter and having this date made and entered of record a Report containing its findings and conclusions thereon, which Report is hereby referred to and made a part hereof, the Commission has found that Agreement No. 9827-1, as modified in the Report, is not unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, ports or between exporters from the United States and their foreign competitors, nor detrimental to the commerce of the United States, contrary to the public interest, or violative of the Shipping Act, 1916, if the conditions set forth in the Report are met.

Order of the Federal Maritime Commission

THEREFORE, IT IS ORDERED, That Agreement No. 9827-1, as modified in this Report and subject to the conditions contained therein, is approved; That proponents of the agreements within thirty (30) days from the date of service of the Order submit to the Commission evidence of their acceptance of the terms and conditions of the approval of Agreement No. 9827-1 granted herein by refiling the agreement with all modifications and conditions in full conformity with our Report.

IT IS FURTHER ORDERED, That the promissory note described in the Report is found subject to section 15 of the Shipping Act, 1916, and is approved.

IT IS FURTHER ORDERED, That the supplemental agreement described in the Report is found subject to section 15 of the Shipping Act, 1916, but is disapproved.
By the Commission.

/s/ FRANCIS C. HURNEY
Francis C. Hurney
Secretary

(SEAL)

[Served February 12, 1973.]

FEDERAL MARITIME COMMISSION

Docket No. 69-56

AGREEMENT NO. 9827 BETWEEN UNITED STATES LINES, INC. AND SEA-LAND SERVICE, INC. (AND WALTER KIDDE & CO., INC. AND R. J. REYNOLDS TOBACCO CO., GUARANTORS)

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SEA-LAND SERVICE, INC.;
AND WALTER KIDDE & COMPANY, INC.
UNITED STATES LINES, INC.

DENIAL OF MOTION TO REOPEN THE RECORD

On February 12, 1973, the Commission issued its Report and Order in the above-captioned proceedings approving by a three-to-two vote a modification to the merger agreement providing for the independence of United States Lines and the continuing surveillance of the acquisition permitted in its decision.

American Export Lines, Inc. (AEL), an opponent of the agreement, has filed, on February 21, 1973, a pleading styled as a "Motion to Reopen the Record." 1/ The relief

1/ A letter dated February 26, 1973 addressed to the Secretary of the Commission by counsel for R. J. Reynolds/Sea-Land registered opposition to the motion principally arguing that it did not conform to the Commission's Rules of Practice and Procedure. Counsel for AEL filed a reply requesting that the Commission treat its pleading as either a "Motion" or a "Petition". In any event, the Commission has decided in the special circumstances of this case to entertain the pleading as a motion under Rule 5(m) (46 C.F.R. 502.73). The nature and contents of the motion render it unnecessary for us to await replies from other parties.

sought has a twofold purpose, i.e. to reopen the record to receive "up-to-date evidence on the financial condition of United States Lines and for receiving evidence concerning the issue of whether there is any likelihood of United States Lines being dismembered if its acquisition by R. J. Reynolds were not to be permitted."

A close attention to the arguments made by AEL register a familiar ring. The proponents and the opponents of the agreement have often argued about the "actual" financial condition of United States Lines. If the academic question of United States Lines' financial condition is to be further debated, it seems evident that the Commission was correct. It recognized first that financial conditions of U.S.-flag carriers are subject to "peaks and valleys" (Mimeo. Decision, p. 123). The inference from AEL's concluding discussion is that in truth it objects to the decision on the merits. However, the decision has thoroughly treated these issues, and to permit additional evidence would be totally unwarranted in this already lengthy proceeding.

Accordingly, the motion is denied.

By the Commission.*

(SEAL)

Francis C. Hurney
Secretary

* Chairman Bentley and Commissioner Barrett would grant the relief sought.

APPENDIX C

[Composite Conformed Copy
with Conformed Exhibits A-D]

AGREEMENT dated as of October 27, 1969, among UNITED STATES LINES, INC., a Delaware corporation (hereinafter called "U.S. Lines"), WALTER KIDDE & COMPANY, INC., a Delaware corporation (hereinafter called "Kidde"), SEA-LAND SERVICE, INC., a Delaware corporation (hereinafter called "Sea-Land") and R. J. REYNOLDS TOBACCO COMPANY, a New Jersey corporation (hereinafter called "Reynolds").

In consideration of the premises and the mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the parties agree as follows:

1. For the purposes of this Agreement, the following definitions shall apply:

Equipment Lease — The Agreement of Lease and Sublease dated as of October 27, 1969, between U.S. Lines and Sea-Land, in the form attached hereto as Exhibit A.

Kidde Guaranty — The Guaranty of Performance of Kidde dated as of October 27, 1969, in the form attached hereto as Exhibit B.

Reynolds Guaranty — The Guaranty of Performance of Reynolds dated as of October 27, 1969, in the form attached hereto as Exhibit C.

Time Charter — The Time Charter Party dated as of October 27, 1969, between U.S. Lines and Sea-Land, in the form attached hereto as Exhibit D.

To the extent terms used herein have been defined in any of the foregoing documents they shall have the same meaning herein.

2. This Agreement is subject to the prior approval of the Federal Maritime Commission and shall be deemed cancelled concurrently with any cancellation of the Time Charter pursuant to Section 1 thereof and the Equipment Lease and neither the Time Charter nor the Equipment Lease shall be effective unless this Agreement receives such approval.

3. Contemporaneously with the execution and delivery of this Agreement

(i) U.S. Lines and Sea-Land shall execute and deliver the Time Charter and the Equipment Lease;

(ii) Kidde shall execute and deliver the Kidde Guaranty; and

(iii) Reynolds shall execute and deliver the Reynolds Guaranty.

4. U.S. Lines represents and warrants as follows:

(i) U.S. Lines is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware, and has full power, authority and legal right to execute and deliver this Agreement, the Time Charter and the Equipment Lease and to perform and observe the respective terms thereof;

(ii) At the date hereof there are no actions, suits or proceedings pending or, to the knowledge of U.S. Lines, threatened against or affecting U.S. Lines in respect of the Time Charter or the Equipment Lease or this Agreement or which, in the judgment of U.S. Lines, will materially and adversely affect its ability to perform thereunder;

(iii) At the date hereof Kidde is the sole stockholder of U.S. Lines and as such has duly approved the execution, delivery and performance of the Time Charter, the Equipment Lease and this Agreement;

(iv) The execution and delivery of this Agreement, the Time Charter and the Equipment Lease, the consummation of the transactions herein and therein contemplated, and the fulfillment of and compliance with the terms and provisions hereof and thereof when approved by the Federal Maritime Commission will not conflict with or result in a breach of any of the terms, conditions or provisions of any order, injunction or decree of any court or governmental authority in effect at the date of this Agreement or of the certificate of incorporation or by-laws of U.S. Lines, or (subject to obtaining consents of lessors or owner-participants as specified in Schedule A or Schedule B to the Equip-

ment Lease and the consent of the banks party to the Credit Agreement dated as of May 22, 1968 between U.S. Lines and such banks and the expiration on December 31, 1969 of U.S. Lines' Operating-Differential Subsidy Agreement, and any consents required from the mortgagees under the mortgages listed in Schedule B to the Time Charter authorizing the creation of any liens on the Vessels arising by virtue of the Time Charter), of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which U.S. Lines is now a party or by which it may be bound or constitute (with the giving of notice or the passage of time, or both) a default thereunder, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any property of U.S. Lines pursuant to the terms of any such agreement or instrument;

(v) When executed and delivered, the Time Charter and the Equipment Lease will constitute binding agreements of U.S. Lines in accordance with their terms, subject to any applicable bankruptcy, moratorium or other laws affecting the enforcement of contractual rights and to any equitable principles limiting the right to obtain specific performance of certain obligations of U.S. Lines thereunder;

(vi) U.S. Lines is, and at all times while the Time Charter and the Equipment Lease are in effect will continue to be, a citizen of the United States, duly qualified to engage in coastwise trade, within the meaning of the Shipping Act, 1916, as amended, it being understood, however, that the rights and obligations of U.S. Lines under the Time Charter shall continue regardless of whether at any time the representation with respect to such qualification ceases to be true and the failure of such representation to be true insofar as it pertains to coastwise trade at any time during the Charter Period shall not subject U.S. Lines to any liability to Sea-Land or Reynolds whatsoever; and

(vii) At the date hereof U.S. Lines is not, and on the date of the commencement of the Charter Period will not be, in default in respect of any material provision (a) under any mortgage, construction or conversion contract, subsidy agreement or other material contract relating to the Vessels or (b) under any lease, conditional sale agreement or other material

contract relating to any of the equipment covered by the Equipment Lease.

5. Sea-Land represents and warrants as follows:

(i) Sea-Land is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware, and has full power, authority and legal right to execute and deliver this Agreement, the Time Charter and the Equipment Lease and to perform and observe the respective terms thereof;

(ii) At the date hereof there are no actions, suits or proceedings pending or, to the knowledge of Sea-Land, threatened against or affecting Sea-Land in respect of the Time Charter, the Equipment Lease or this Agreement or which, in the judgment of Sea-Land, will materially and adversely affect its ability to perform thereunder;

(iii) No approval of McLean Industries, Inc., the sole stockholder of Sea-Land or of Reynolds, the sole stockholder of McLean Industries, Inc., is required for the execution, delivery or performance of the Time Charter, the Equipment Lease or this Agreement;

(iv) The execution and delivery of this Agreement, the Time Charter and the Equipment Lease, the consummation of the transactions herein and therein contemplated, and the fulfillment of and compliance with the terms and provisions hereof and thereof will not conflict with or result in a breach of any of the terms, conditions or provisions of any order, injunction or decree of any court or governmental authority in effect at the date of this Agreement or of the certificate of incorporation or by-laws of Sea-Land, or of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which Sea-Land is now a party or by which it may be bound or constitute (with the giving of notice or the passage of time, or both) a default thereunder, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any property of Sea-Land pursuant to the terms of any such agreement or instrument;

(v) When executed and delivered, the Time Charter and the Equipment Lease will constitute binding agreements of Sea-Land in accordance with their terms, subject to any applicable bankruptcy, moratorium or other laws affecting the enforcement of

contractual rights and to any equitable principles limiting the right to obtain specific performance of certain obligations of Sea-Land thereunder; and

(vi) Sea-Land is a citizen of the United States, duly qualified to engage in coastwise trade, within the meaning of the Shipping Act, 1916, as amended.

6. Kidde represents and warrants as follows:

(i) Kidde is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware, and has full power, authority and legal right to execute and deliver this Agreement and the Kidde Guaranty and to perform and observe the respective terms thereof;

(ii) At the date hereof there are no actions, suits or proceedings pending or, to the knowledge of Kidde, threatened against or affecting Kidde in respect of the Kidde Guaranty or this Agreement or which, in the judgment of Kidde, will materially and adversely affect its ability to perform thereunder;

(iii) No approval of the stockholders of Kidde is required for the execution, delivery or performance of the Kidde Guaranty, this Agreement, the Time Charter or the Equipment Lease;

(iv) The execution and delivery of this Agreement and the Kidde Guaranty, the consummation of the transactions herein and therein contemplated, and the fulfillment of and compliance with the terms and provisions hereof and thereof will not conflict with or result in a breach of any of the terms, conditions or provisions of any order, injunction or decree of any court or governmental authority in effect at the date of this Agreement or of the certificate of incorporation or by-laws of Kidde, or of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which Kidde is now a party or by which it may be bound or constitute (with the giving of notice or the passage of time, or both) a default thereunder, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any property of Kidde pursuant to the terms of any such agreement or instrument; and

(v) When executed and delivered, the Kidde Guaranty will constitute a binding agreement of Kidde, enforceable in accordance with its terms, subject to any applicable bankruptcy, mora-

torium or other laws affecting the enforcement of creditors' rights generally.

7. Reynolds represents and warrants as follows:

(i) Reynolds is a corporation duly incorporated, validly existing and in good standing under the laws of the State of New Jersey, and has full power, authority and legal right to execute and deliver this Agreement and the Reynolds Guaranty and to perform and observe the respective terms thereof;

(ii) At the date hereof there are no actions, suits or proceedings pending or, to the knowledge of Reynolds, threatened against or affecting Reynolds in respect of the Reynolds Guaranty or this Agreement, or which, in the judgment of Reynolds, will materially and adversely affect its ability to perform thereunder;

(iii) No approval of the stockholders of Reynolds is required for the execution, delivery or performance of the Reynolds Guaranty, this Agreement, the Time Charter or the Equipment Lease;

(iv) The execution and delivery of this Agreement and the Reynolds Guaranty, the consummation of the transactions herein and therein contemplated, and the fulfillment of and compliance with the terms and provisions hereof and thereof will not conflict with or result in a breach of any of the terms, conditions and provisions of any order, injunction or decree of any court or governmental authority in effect at the date of this Agreement or of the certificate of incorporation or by-laws of Reynolds, or of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which Reynolds is now a party or by which it may be bound or constitute (with the giving of notice or the passage of time, or both) a default thereunder, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any property of Reynolds pursuant to the terms of any such agreement or instrument; and

(v) When executed and delivered, the Reynolds Guaranty will constitute a binding agreement of Reynolds, enforceable in

accordance with its terms, subject to any applicable bankruptcy, moratorium or other laws affecting the enforcement of creditors' rights generally.

8. U.S. Lines agrees to use its best efforts to obtain the consents referred to in Section 4(iv) hereof as promptly as practicable after the execution and delivery of this Agreement. Kidde agrees to use its best efforts to obtain the consents referred to in the Kidde Guaranty as promptly as practicable after the execution and delivery of this Agreement. If the consents referred to in the Kidde Guaranty are not obtained by November 7, 1969 Sea Land may by notice given to U.S. Lines and Kidde at any time thereafter while such consents have not been obtained terminate this Agreement, the Time Charter and the Equipment Lease. If the consents of banks and mortgagees referred to in Section 4 (iv) hereof are not obtained by November 14, 1969, U.S. Lines may by notice given to Sea-Land and Reynolds and Sea-Land or Reynolds may by notice given to U.S. Lines and Kidde at any time prior to 5:00 P.M. on November 21, 1969, and while such consents have not been obtained, terminate this Agreement, the Time Charter and the Equipment Lease. If any such notice is not so given and the time for giving such notice is not extended by mutual consent, the respective right given to Sea-Land, Reynolds and U.S. Lines to terminate for the causes described shall end. JJMcM MPMcL JXK HDB

9. In connection with the Far East facilities of U.S. Lines, including without limitation its facilities in Japan, the Philippine Islands, Hong Kong, Taiwan and Korea, it is understood that:

(i) All U.S. Lines agreements listed in Schedule I hereto will be assigned, to the extent assignable, to Sea-Land or a wholly-owned subsidiary of Sea-Land and the assignee will assume all further liability in respect of such agreements, both to be effective as soon as practicable but in no event later than 100 days after the commencement of the Charter Period. If any such agreement may not be assigned or if by the commencement of the Charter Period Sea-Land has notified U.S. Lines that it does not desire to assume any such agreement, the cost of termination, if any, shall be shared equally by Sea-Land and U.S. Lines: JJMcM MPMcL JXK HDB

(ii) Title to all equipment in the Far East related to such facilities shall be transferred and sold to Sea-Land or such of its subsidiaries as Sea-Land may designate at U.S. Lines' depreciated cost as of the commencement of the Charter Period, free and clear of all liens, claims and encumbrances, and payment therefor will be made in U.S. dollars as soon as practicable, but in no event later than 100 days after commencement of the Charter Period. Title to such records as are necessary to the activities of such facilities as relate to U.S. Lines' containership business shall be transferred to Sea-Land or such of its subsidiaries as it may designate, it being understood that U.S. Lines shall have access to such records at all reasonable business hours to the extent necessary in connection with audits of its affairs and its tax returns;

(iii) The cost of any payments to personnel employed in such facilities made by U.S. Lines as a result of termination of their employment by U.S. Lines shall be shared equally by U.S. Lines and Sea-Land, whether or not such personnel entitled thereto continues in the employ of Sea-Land; and

(iv) U.S. Lines will use its best efforts to persuade such of the personnel engaged in such facilities as Sea-Land may request to enter the employ of Sea-Land.

Nothing herein contained shall prevent performance by U.S. Lines of, or be deemed to require U.S. Lines to violate any of its obligations to Pacific Far East Lines under, the existing agreement pursuant to which U.S. Lines acts as its agent in the Far East.

10. Sea-Land, at the commencement of the Charter Period, assumes all obligations of U.S. Lines under contracts with respect to equipment not subject to the Equipment Lease and U.S. Lines, at the commencement of the Charter Period, assigns to Sea-Land all its rights under such contracts. U.S. Lines represents and warrants that the original cost of such equipment is not in excess of $6,000,000. U.S. Lines agrees to furnish Sea-Land a list of such contracts not later than December 1, 1969. Upon request of U.S. Lines, Sea-Land shall release to U.S. Lines any portion of such equipment for application by U.S.

Lines to its obligations under Section 7 of the Equipment Lease provided U.S. Lines shall thereafter be responsible for a pro-rata portion of the obligations so assumed by Sea-Land pursuant to this Section 10. Sea-Land agrees that, with respect to any short term equipment leases of U.S. Lines or any of its subsidiaries which are in effect on the fourteenth day after the beginning of the Charter Period, Sea-Land will pay the rental under such leases for the period subsequent to such fourteenth day and will assume all obligations of the lessee under such leases. U.S. Lines will use due diligence to reduce or eliminate all such short term leases before the beginning of the Charter Period.

11. U.S. Lines agrees that, not later than January 15 of each year beginning with 1971, it will furnish Sea-Land with a true and accurate affidavit as to citizenship in the form set forth in Title 32A of the Code of Federal Regulations (Form 32A-CFR – AGE-2).

12. Each party hereto represents and warrants that it has not retained any broker or finder in connection with the transactions covered by the Time Charter or the Equipment Lease and each will indemnify and save harmless the other parties against any and all claims of brokers and finders arising out of actions attributable to it.

13. The representations and warranties made herein shall survive the execution and delivery of this Agreement, the Time Charter, the Equipment Lease, the Kidde Guaranty, the Reynolds Guaranty, the delivery of Vessels under the Time Charter and the lease and sublease of equipment pursuant to the Equipment Lease. The parties shall give prompt notification after the date of this Agreement if any of such representations and warranties shall cease to be true, but such cessation shall not in any way alter the rights or obligations of any party under the documents listed in the first sentence hereof.

14. This Agreement shall be construed in accordance with the Laws of New York and the rights and remedies of the parties hereunder shall be determined in accordance with such laws and for choice of law purposes shall be construed to be an agreement performed solely in the State of New York.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

UNITED STATES LINES, INC.

[SEAL]

By JOHN J. McMULLEN
President

SEA-LAND SERVICE, INC.

[SEAL]

By M. P. McLEAN
Chairman of Corporation

WALTER KIDDE & COMPANY, INC.

[SEAL]

By JAMES X. KILBRIDGE
Vice President

R. J. REYNOLDS TOBACCO COMPANY

[SEAL]

By H. H. RAMM
Vice President

SCHEDULE 1 TO AGREEMENT

List of Agreements — Far East

1. Lease of residential space, two-year term, at 13-3, 7-chome, Minami-Aoyama, Manato-Ku, Tokyo (apartment in 7-story apartment building), presently used by Mr. and Mrs. J. H. Griffith.

2. Agreement of Lease of Building, at 15-11, 1-chome, Alasaka Tamachi, Minato-Ku, Tokyo, between United States Lines Co. and Nihon Chuo Jishu Kabushiki Kaisha.

3. Lease of residence, House #3, 13-3, Nichi-Ochiai, 4-chome, Shinjuku-ku, Tokyo, Japan, presently used by Mr. Thomas J. Mylotte.

4. Lease of residence, House #1, 13-16 Nichi-Ochiai, 4-chome, Shinjuku-ku, Tokyo, Japan, presently used by Mitchell family.

5. Lease of office space in Yokohama, between Nanri Co. Ltd. and U. S. Lines, dated April 7, 1967, of premises in the Nanri Building, No. 71 Yamashita-cho, Naka-ku, Yokohama, Japan.

6. Lease dated May 12, 1969 between U. S. Lines and Jarmain, Davis & Co., Ltd., relating to premises at 75 Kyomachi, Ikuta-ku, Kobe, Japan, as supplemented by Supplement dated May 12, 1969, and Addendum thereto.

7. Agreement of Lease between U. S. Lines and American International Underwriters Japan, Inc., relating to premises in Osaka, Japan, and Addendum thereto dated October 20, 1969 between said parties.

8. Contract of Lease acknowledged October 3, 1969 and Supplementary Agreement dated August 19, 1969 and acknowledged October 3, 1969 both between Inter-Buildings, Inc. and U. S. Lines relating to premises at the L & S Bldg., 1515 Roxas Blvd., Manila, The Philippines.

9. Lease of warehouse space, Warehouse No. 9, Intramuros, Manila, The Philippines, between U. S. Lines and Allied Brokerage Corporation, by Letter agreement.

10. Agreement dated July 2, 1965 between United States Lines Company and Hongkong Land Investment and Agency Company Limited, relating to 615-623 Union House, No. 11 Chater Road, Hong Kong.

11. Agreements relating to Labor in certain Ports or Places, as follows:

a. CEBU Brotherhood Checkers Association (Philippines)

b. Associated Port Checkers and Workers Union (Manila)

c. Associated Watchmen and Security Union (Manila)

d. Minarco Arrastre Stevedoring Co. (Iligan)

[CONFORMED COPY]

EXHIBIT A

AGREEMENT OF LEASE AND SUBLEASE

AGREEMENT OF LEASE AND SUBLEASE (hereinafter called "this Agreement") dated as of October 27, 1969, between UNITED STATES LINES, INC., a Delaware corporation (hereinafter called "U.S. Lines") and SEA-LAND SERVICE, INC., a Delaware corporation (hereinafter called "Sea-Land").

WHEREAS U.S. Lines and Sea-Land have, contemporaneously with the execution of this Agreement, executed a Time Charter Party dated as of October 27, 1969 (hereinafter called the "Time Charter") with respect to certain Vessels, as that term is defined in the Time Charter (hereinafter called the "Vessels"), owned by or being constructed or converted for U. S. Lines; and

WHEREAS in connection with the operation of the Vessels, U.S. Lines has purchased or contracted to purchase certain equipment (the "Owned Equipment"); and

WHEREAS U.S. Lines desires to lease and Sea-Land desires to let the Owned Equipment on the terms and subject to the conditions set forth herein; and

WHEREAS U.S. Lines has entered into certain leases or conditional sale or similar agreements with respect to equipment for use in connection with the Vessels (the "Leased Equipment"); and

WHEREAS subject to obtaining the consents of existing lessors or secured parties where required, U.S. Lines desires to sublet the Leased Equipment to Sea-Land, and Sea-Land desires to accept such sublease of the Leased Equipment on the terms and subject to the conditions set forth herein;

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the parties agree as follows:

1. This Agreement is subject to the prior approval of the Federal Maritime Commission and shall be deemed cancelled concurrently with the cancellation of the Time Charter pursuant to Section 1 thereof and

the Time Charter shall not be effective unless this Agreement receives such approval.

2. U.S. Lines agrees to furnish Sea-Land not later than December 1, 1969 (i) a Schedule A to this Agreement describing the Owned Equipment and a Schedule B to this Agreement describing the Leased Equipment, in each case in form satisfactory to Sea-Land. United States Lines represents, warrants and agrees that the Equipment listed in such Schedules (including for all purposes of this paragraph Equipment on order or under true lease) will be shown to have had an original cost aggregating approximately $60,000,000 and a depreciated value at December 31, 1970 of not less than $49,776,000. U.S. Lines hereby demises and lets to Sea-Land the Owned Equipment and, subject to obtaining consents of lessors or secured parties where necessary, U.S. Lines hereby demises and sublets to Sea-Land the Leased Equipment for the Term of this Agreement, as hereinafter defined, and Sea-Land takes and leases for the Term of this Agreement the Owned Equipment and sublets for the Term of this Agreement the Leased Equipment upon the terms and subject to the conditions set forth herein. *The Owned Equipment and the Leased Equipment (herein collectively called the "Equipment") is leased or subleased without warranty or representation as to its present condition and, in the case of subleased Equipment, subject to all the terms and conditions of each lease, conditional sale agreement or related agreement in respect thereof.* Effective with the beginning of the Term hereof, except as specifically provided below, Sea-Land hereby assumes and agrees to perform all obligations of U.S. Lines under each lease, conditional sale agreement and related agreement covering Leased Equipment and U.S. Lines agrees to perform those obligations under such leases and conditional sale agreements to the extent that by the terms thereof Sea-Land is unable to perform such obligations. To the extent Sea-Land pays rental or other amounts under such leases and conditional sale agreements it shall be entitled to a credit in the same amount against the rental payable pursuant to Section 4 hereof. Each item of Equipment shall be delivered to Sea-Land as promptly as practicable after the beginning of the Term of this Agreement, subject to the provisions of Section 6 hereof. *Such deliveries shall be made in an "as is" condition at the regular terminals for such Equipment of U.S. Lines or at such other place as may be mutually agreed on.* Sea-Land agrees that it will have a representative at each of such terminals who will

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accept Equipment so delivered by signing a Certificate of Delivery and Acceptance substantially in the form of Schedule C hereto.

Notwithstanding any other provision of this Agreement, Sea-Land will not assume U.S. Lines' obligations under the contract dated October 1969 between Adamson-Alliance (Horsehay) Ltd. and U.S. Lines relating to the construction of three container cranes. U.S. Lines will not make any material changes in such contract without Sea-Land's written consent. Any premium or penalty payable under such contract shall be for Sea-Land's account. If the Time Charter is not cancelled, Sea-Land shall have the right to designate the place for locating such cranes and Sea-Land shall have the obligation and expense of constructing the foundation works for such cranes. If the place so designated is not in the Port of New York any additional delivery and other costs shall be for Sea-Land's account. Increased costs, if any, resulting from Sea-Land's failure to complete such foundation works by the date the manufacturer is prepared to erect the cranes shall be for Sea-Land's account. Such cranes shall be delivered as promptly as practicable in accordance with the terms of such contract, and will become subject to this Agreement as Leased Equipment upon such delivery and the acceptance thereof by Sea-Land.

3. U.S. Lines represents and warrants that at the time of delivery and acceptance thereof under this Agreement: it will have good and valid title to the Owned Equipment shown in Schedule A as then owned by U.S. Lines; such portion of the Owned Equipment will be (a) free and clear of all liens, claims or other encumbrances other than unfiled maritime liens and liens disclosed in Schedule A, (b) not subject to any bond in connection with its use in the United States of America, its territories and possessions or elsewhere except as disclosed in Schedule A, (c) usable by Sea-Land in the United States of America, its territories and possessions or Puerto Rico or wherever it is presently being used by U.S. Lines, (d) to the extent chassis are included in such Owned Equipment, duly and properly registered with or licensed for use by the appropriate agency or agencies in the jurisdictions set forth in the List of Chassis Registrations to be furnished to Sea-Land, and (e) covered by all necessary consents and approvals by, or certificates of, the U.S. Coast Guard, U.S. Department of Transportation or any other person or governmental authority having jurisdiction with respect to the use of the Owned Equipment in the form to be furnished to Sea-Land. The foregoing representations and warranties shall not

apply to any Owned Equipment which is lost, stolen or destroyed between the date of this Agreement and the date of delivery and acceptance referred to above.

U.S. Lines represents and warrants that at the time of delivery and acceptance thereof under this Agreement: the Leased Equipment will be (a) free and clear of all liens, claims or other encumbrances created or caused by U.S. Lines other than unfiled maritime liens and liens disclosed in Schedule B, (b) not subject to any bond in connection with its use in the United States of America, its territories and possessions or elsewhere except as disclosed in Schedule B, (c) usable by Sea-Land in the United States of America, its territories and possessions or Puerto Rico or wherever it is presently being used by U.S. Lines, (d) to the extent chassis are included in such Leased Equipment, duly and properly registered with or licensed for use by the appropriate agency or agencies in the jurisdictions set forth in the List of Chassis Registrations to be furnished to Sea-Land, and (e) covered by all necessary consents and approvals by, or certificates of, the U.S. Coast Guard, U.S. Department of Transportation or any other person or governmental authority having jurisdiction with respect to the use of the Leased Equipment in the form to be furnished to Sea-Land. The foregoing representations and warranties shall not apply to any Leased Equipment which is lost, stolen or destroyed between the date of this Agreement and the date of delivery and acceptance referred to above.

Except for the warranties made by U.S. Lines in this Section, U.S. Lines makes no warranty, and none shall be implied hereunder, as to the seaworthiness, condition, fitness for use or merchantability of any Equipment, or as to any other matter or thing affecting any Equipment, all such warranties being expressly disclaimed.

Acceptance of Equipment delivered hereunder shall be conclusive proof of such Equipment's compliance, as between U.S. Lines and Sea-Land, with all requirements of this Agreement.

4. The aggregate annual rental for the Equipment shall be $8,461,920 payable to U.S. Lines in New York Clearing House funds in monthly installments of $705,160 each, which amount Sea-Land hereby agrees to pay. The first such installment shall be due and payable on the due date of the first installment of the Fixed Element, as that term is defined in the Time Charter (hereinafter called the "Fixed Element"), and each subsequent installment shall be due and payable on the due date of each subsequent installment of

the Fixed Element of such charter hire, whether or not the Time Charter shall be in effect. All of such installments shall be due and payable regardless of whether or not all of the Equipment has been acquired by U.S. Lines by the beginning of the Charter Period (as defined in the Time Charter). To the extent any installment of Fixed Element is prorated for a portion of a month the installment of rent payable under this Agreement shall be prorated on the same basis. Sea-Land agrees to pay on demand as additional rent interest at the rate of 1% per annum over the minimum commercial lending rate of First National City Bank, New York, N. Y., for the relevant period on all installments of rent not paid within five days after the due date thereof. JJMcM MPMcL

5. Subject to the provisions hereof, Sea-Land shall have and hold the Equipment for a term of 20 years (the "Term"), commencing with the beginning of the Charter Period. U.S. Lines reserves all rights it may have under the Uniform Commercial Code and the right, in addition to any other rights it may then have, to terminate this Agreement and the Term hereby granted, by written notice of termination given upon the occurrence of any event of default described in Section 21 hereof, or at any time thereafter while such default remains in effect, provided that no such termination shall become effective so long as an arbitration in respect of such default (other than a default in the payment of any installment of rental) is pending or if Sea-Land is successful in such arbitration.

6. On and after the beginning of the Term, U.S. Lines agrees to take all steps reasonably necessary to enforce each contract specified in Schedule A or B relating to the purchase of the Equipment which has not been delivered by the beginning of the Term. On or prior to the beginning of the Term, U.S. Lines agrees to use its best efforts to obtain the consents of lessors of or parties having a security interest in Leased Equipment required to sublet the same as promptly as practicable after the beginning of the Term. If it is ascertained at any time after the date of this Agreement that (a) any of the Equipment covered by a contract listed in Schedule A or B has not been delivered pursuant to such contract within the later of 30 days after the delivery date specified in such contract, subject to *force majeure*, or 30 days after the beginning of the Term, (b) any of the Owned or Leased Equipment was lost, stolen or destroyed or condemned or requisitioned prior to the date of this Agreement, (c) any of the Owned Equipment specified in Schedule A or Leased Equipment specified in Schedule B JJMcM MPMcL JJMcM MPMcL

was included by error in such Schedule, (d) any consent referred to above cannot be obtained, or (e) all presently Owned Equipment (other than Equipment lost, stolen or destroyed after the date of this Agreement) is not delivered within 180 days after the beginning of the Term, U.S. Lines will, as promptly as practicable, either lease or sublease and deliver to Sea-Land equivalent equipment (A) to replace such undelivered, lost, stolen, destroyed, condemned, requisitioned or missing portion of the Owned or Leased Equipment and (B) to replace such Leased Equipment as to which such consent is not obtained, or, at U.S. Lines' election, evidenced by notice to Sea-Land, such Equipment shall be deemed no longer covered by this Agreement and the lease rental shall be reduced in the same proportion as the value placed on such Equipment for the purposes of this Agreement bears to the total value of all Equipment intended to be covered by this Agreement. In the latter event U.S. Lines shall refund to Sea-Land within 45 days after such determination the amount of rent paid hereunder with respect to such Equipment.

7. All risk of loss, theft, damage, destruction or requisition of any of the Equipment after the date of this Agreement shall be for the account of Sea-Land unless this Agreement is cancelled as provided in Section 1 hereof. U.S. Lines agrees to insure all the Equipment after the date of this Agreement to the same extent it is obligated to insure that portion of the Equipment covered by the lease referred to in Section 15 hereof. Effective on the commencement of the Charter Period, U.S. Lines agrees to assign, and does hereby assign, to Sea-Land all its rights to insurance proceeds and claims for damages in respect to Equipment lost, stolen, destroyed, or damaged prior to any delivery thereof, subject to any superior rights of any relevant lessor, conditional vendor or secured party: provided that such assignment shall apply only in respect of Equipment which has not been replaced or repaired by U.S. Lines prior to the beginning of the Charter Period. U.S. Lines agrees to cooperate to the fullest extent reasonably practicable to effect the collection of such proceeds in the enforcement of such claims and Sea-Land agrees to reimburse U.S. Lines for all reasonable costs and expenses incurred in connection therewith. This Agreement is a net lease and it is intended that Sea-Land shall pay all costs and expenses of every character in connection with the use, maintenance, repair and reconstruction of the Equipment but only after delivery thereof. Except as otherwise expressly provided herein,

this Agreement shall not terminate nor shall Sea-Land have any right to terminate this Agreement or be entitled to the abatement, suspension, deferment or reduction of any rent hereunder, nor shall the obligations hereunder of Sea-Land be affected by reason of any damage to or the destruction or loss of all or any part of the Equipment from whatever cause, the loss or theft of any portion of the Equipment, the taking of the Equipment or any portion thereof by condemnation, requisition, eminent domain or otherwise, the prohibition, limitation or restriction of Sea-Land's use of all or any part of the Equipment or the termination (otherwise than by U.S. Lines' fault) of Sea-Land's interest under any lease of a portion of the Equipment. Any amounts paid in respect of Equipment in any such condemnation, requisition, eminent domain or other taking shall be disposed of in the same manner as insurance proceeds as provided for in Section 17 hereof.

8. Sea-Land covenants that it will remain obligated under this Agreement in accordance with its terms and, except as provided in Section 26 hereof, will take no action to terminate, rescind or avoid the lease and sublease represented hereby notwithstanding the bankruptcy, reorganization, liquidation or other similar proceeding affecting U.S. Lines, so long as the use of any of the Equipment hereunder is not terminated as a result of such proceeding.

9. After delivery and acceptance of any Equipment hereunder, Sea-Land will pay, as and when the same shall be due and payable, all property and excise taxes, license fees, permit fees or other taxes or charges which may be assessed against, levied or imposed upon or with respect to the Equipment or upon the use thereof; all dues, assessments, governmental charges, fines and penalties lawfully imposed in respect of the Equipment; and all franchise, gross receipts or other taxes assessed against U.S. Lines which, and to the extent any such tax, would not have been so assessed but for the use by Sea-Land of such Equipment in the taxing jurisdiction; provided (i) Sea-Land shall not be obligated to pay any tax, or any penalty, fine or interest thereon, on or measured by, the income of U.S. Lines imposed by any Federal, State or local government or taxing authority in the United States of America, (ii) Sea Land's obligation in respect to any such franchise, gross receipts or other tax assessed against U.S. Lines shall be reduced where such tax is paid to a foreign government to the extent such amount is available and usable as a credit or deduction with respect

to U.S. Lines' United States income tax, and (iii) Sea-Land shall not be obligated to pay any such taxes, dues, assessments, license fees, permit fees, governmental charges, fines or penalties if (and to the extent that) the same are being contested by Sea-Land in good faith and by appropriate proceedings so long as such proceedings do not involve any material risk of sale, forfeiture or loss of such Equipment.

10. After delivery and acceptance of any Equipment hereunder, Sea-Land will, at its cost and expense, comply with all legal requirements affecting such Equipment and the use thereof, including those which require the making of changes in or insurance on such Equipment.

11. After delivery and acceptance of any Equipment hereunder, Sea-Land will discharge promptly, at its cost and expense, all liens upon such Equipment which arise out of its use thereof or for labor or materials furnished in respect thereof. Sea-Land will protect and defend the title of U.S. Lines to, or interest in, such Equipment from all liens, encumbrances and charges except those created by U.S. Lines. U.S. Lines will discharge promptly all liens and other obligations attaching to the Equipment at the time of delivery and acceptance thereof hereunder or arising out of its use of the Equipment prior thereto, other than liens on Leased Equipment in favor of the lessor thereof or party secured thereof and security interests created in connection with the acquisition of Equipment not presently owned by U.S. Lines. U.S. Lines will not create any liens or encumbrances on any Equipment after such delivery and acceptance other than security interests under conditional sale agreements with respect to Leased Equipment not delivered by the beginning of the Charter Period.

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12. After delivery and acceptance of any Equipment hereunder, Sea-Land covenants to pay, and to indemnify U.S. Lines from and against all liabilities, damages, costs, expenses, suits or claims arising from (i) use of such Equipment, including without limitation any injury to, or the death of, any person or damage to property growing out of or connected with the use or condition of such Equipment or (ii) any violation by Sea-Land of this Agreement or of any other agreement, restriction or legal requirement affecting such Equipment or the use thereof.

13. Neither U.S. Lines nor Sea-Land shall be required to repair or replace any of the Owned Equipment except to the extent necessary to avoid the imposition of any liability on U.S. Lines in respect thereof, in which case after the commencement of the Charter Period Sea-Land shall make such repairs and replacements at its sole cost and expense. Sea-Land shall be required to repair or replace Leased Equipment after the commencement of the Charter Period only to the extent required in any relevant leases or security agreements affecting Equipment.

14. Sea-Land shall be entitled to letter or mark any of the Owned Equipment in such manner as it deems desirable. Subject to obtaining lessors' or secured parties' consents where required, Sea-Land may letter or mark the Leased Equipment to the extent permitted by the applicable leases or security agreements. If Sea-Land shall change the identification number used by U.S. Lines for any piece of Equipment, it shall promptly notify U.S. Lines of the new number chosen for such piece of Equipment and of any subsequent change thereof. Any such notice shall also specify the previous number of such piece of Equipment.

15. Certain of the Leased Equipment covered by this Agreement is owned by Manufacturers Hanover Trust Company, Trustee, and leased to U.S. Lines pursuant to the terms of a lease dated as of May 1, 1968. This Agreement and the rights of any party with respect to the possession of such Leased Equipment are in all respects subject to the rights of Manufacturers Hanover Trust Company, Trustee, Lessor under such lease.

16. Sea-Land shall have sole discretion in determining whether any item of the Owned Equipment has become obsolete or of no use or value and Sea-Land may dispose of items of the Owned Equipment as to which it has made such determination and, U.S. Lines agrees to execute and deliver all necessary acquittances, releases and bills of sale or other instruments which may be necessary or desirable to effect such disposal.

17. After the delivery thereof, Sea-Land shall be obligated to insure the Leased Equipment to the extent required by the terms of the leases or other agreements referred to in Schedule B covering the

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same. All insurance in respect of the Equipment shall either name U.S. Lines, its parent, subsidiary or related companies as assureds or shall contain an express waiver of subrogation. Insurance claims by reason of damage to or destruction of any Equipment may be adjusted solely by Sea-Land unless otherwise required by the terms of the leases or other agreements covering Leased Equipment damaged or destroyed. Insurance proceeds may be used by Sea-Land to replace Equipment but Sea-Land shall be under no obligation to do so and the entire amount of any insurance award may be retained by Sea-Land unless otherwise provided in a lease or security agreement covering the Equipment involved. To the extent any such insurance proceeds are paid by Sea-Land to such a lessor or secured party under any lease or security agreement Sea-Land shall be entitled to credit such amount against the next installments of rental payable under Section 4 hereof. If Sea-Land shall pay or reimburse U.S. Lines for any cost or expense, U.S. Lines will cooperate with Sea-Land in settling any insurance claim and in ensuring that any proceeds from insurance in respect of Owned Equipment become the property of Sea-Land.

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18. Sea-Land hereby agrees to pay all sales, use, transfer, turnover and similar taxes, if any, incurred in connection with the transactions contemplated by this Agreement, and the cost of changing chassis registration at the expiration of the lease or sublease thereof.

19. Sea-Land shall have the right to sublease the Equipment or any part thereof, but no such sublease shall relieve Sea-Land of any of its obligations under this Agreement and such sublease shall be in compliance with the terms and provisions of the leases or other agreements referred to in Schedule B applicable to subleases of the Leased Equipment.

20. This Agreement, or any of the moneys due hereunder, may be assigned by U.S. Lines or Sea-Land, as the case may be, provided that in the case of an assignment of the Agreement the assignee shall expressly undertake in writing to be, and U.S. Lines or Sea-Land, as the case may be, shall also remain, liable for the performance of its obligations hereunder.

21. In the event that (a) Sea-Land shall default in the payment of any installment of rent for more than 15 days after written notice

thereof is given to Sea-Land by U.S. Lines, or (b) Sea-Land shall default in the performance or compliance with any of the other provisions of this Agreement to be performed or complied with by it for more than 30 days after written notice of such default is given to Sea-Land by U.S. Lines, or (c) Sea-Land shall become insolvent or bankrupt or make an assignment for the benefit of creditors or consent to the appointment of a trustee or receiver, or (d) a trustee or a receiver shall be appointed for Sea-Land or for a substantial part of its property without its consent and shall not be dismissed for a period of 30 days, or (e) bankruptcy, reorganization or insolvency proceedings shall be instituted by or against Sea-Land, and if instituted against Sea-Land shall not be dismissed for a period of 30 days, or (f) there shall exist an uncured default under the Time Charter, U.S. Lines may, at its option, withdraw the then existing Equipment from the service of Sea-Land upon giving written notice to Sea-Land or in the event of any uncured default under any security agreement or lease with respect to Leased Equipment U.S. Lines may, at its option, withdraw the then existing Equipment subject to such security agreement or lease; provided, however, that if any claimed default of Sea-Land (other than a default in the payment of any installment of rental) is subject to arbitration pursuant to Section 28 hereof, the Equipment may not be withdrawn from the service of Sea-Land until an arbitration has been held and Sea-Land has failed to comply with the arbitration award within 15 days after the date thereof and provided, further, that if any claimed default is not subject to arbitration pursuant to Section 28 hereof, no Equipment may be so withdrawn until a final court decision, after all appeals, has been made against Sea Land and Sea-Land has not complied with such decision within 15 days thereafter. Sea-Land shall pay interest to U.S. Lines on any overdue rent at the rate of 1% per annum over the minimum commercial lending rate of First National City Bank, New York, N. Y. for the period subsequent to the default if U.S. Lines is successful in such arbitration. Any withdrawal of Equipment shall be without prejudice to any remedy at law or in equity available to U.S. Lines.

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If U.S. Lines withdraws the Equipment, Sea-Land shall forthwith deliver possession of the Equipment to the person entitled thereto. For the purpose of delivering possession of any item of Equipment, Sea-Land shall, at its own cost, expense and risk (except as hereinafter stated):

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A. Forthwith deliver such Equipment to such of Sea-Land's terminals as are normally used for container operations

by Sea-Land as U.S. Lines may designate or, in the absence of such designation, as Sea-Land may select.

B. Permit U.S. Lines to store such Equipment at such terminal or terminals of Sea-Land for a period not exceeding one hundred eighty days at the risk of Sea-Land.

The assembling, delivery, storage and transporting of the Equipment as hereinbefore provided are of the essence of this Agreement, and upon application to any court having jurisdiction in the premises, U.S. Lines shall be entitled to a decree against Sea-Land requiring specific performance of the covenants of Sea-Land so to assemble, deliver, store and transport the Equipment.

Without in any way limiting the obligation of Sea-Land under the foregoing provisions of this Section 21, Sea-Land hereby irrevocably appoints U.S. Lines as the agent and attorney of Sea-Land, with full power and authority, at any time while Sea-Land is obligated to deliver possession of any Equipment to U.S. Lines, to demand and take possession of such Equipment in the name and on behalf of Sea-Land from whosoever shall be at the time in possession thereof.

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22. U.S. Lines agrees that at the expiration of each lease or conditional sale or other security agreement covering any of the Equipment it will purchase the Equipment then covered by such lease or conditional sale or other security agreement. Equipment so purchased shall automatically be subject to this Agreement and be leased hereunder without any increase in rent. Equipment so purchased by U.S. Lines shall be insured and otherwise treated on the same basis as Owned Equipment.

23. U.S. Lines shall afford Sea-Land the benefit of all of U.S. Lines' rights, if any, against manufacturers and lessors of Equipment with respect to warranties, royalty liability, patent liability, and claims of patent infringement for or on account of any use of the Equipment after the delivery and acceptance thereof by Sea-Land.

24. At the stated expiration of the Term, Sea-Land shall have the right to purchase any of the Owned Equipment (including any of the Equipment purchased by U.S. Lines in accordance with Section 22 hereof) which is then subject to this Agreement on payment of $1.00. Upon such purchase U.S. Lines agrees to execute and deliver

to Sea-Land a bill or bills of sale and an assignment or assignments of registrations of chassis, in such forms as Sea-Land specifies to the extent required to vest title thereto in Sea-Land free and clear of all liens, claims or other encumbrances of every nature except those created or caused by Sea Land.

25. Sea-Land in its discretion may pay and discharge any amounts or liens which U.S. Lines is obligated to pay or discharge in respect of the Equipment as a result of its ownership or use of the Equipment prior to the delivery and acceptance thereof hereunder and which U.S. Lines fails to pay or discharge. All such amounts or liens so paid shall be credited against the next installments of rent Sea-Land is obligated to pay hereunder. Sea-Land, though privileged to do so, shall be under no obligation to U.S. Lines to make any such payments nor shall the making thereof relieve U.S. Lines of any default in that respect.

26. In the event that (i) U.S. Lines shall become insolvent or bankrupt or make an assignment for the benefit of creditors or consent to the appointment of a trustee or receiver or (ii) a trustee or a receiver shall be appointed for U.S. Lines or for a substantial part of its property without its consent and shall not be dismissed for a period of 30 days or (iii) bankruptcy, reorganization or insolvency proceedings shall be instituted by or against U.S. Lines and, if instituted against U.S. Lines, shall not be dismissed for a period of 30 days:

> Sea-Land shall have an irrevocable option to purchase all of the Owned Equipment leased hereunder at the time of the exercise of said option, upon written notice to U.S. Lines on a date set for such purchase by Sea-Land in such written notice. The purchase price for such Equipment shall be equal to the depreciated value, as of such date, of such Equipment. Delivery of title to such Equipment shall take place on the date set for such purchase in accordance with the provisions of Section 24 hereof in respect of the exercise of the option there provided for.

27. All notices and other communications under this Agreement shall be given in the manner provided in Section 29 of the Time Charter.

28. Any dispute or difference of opinion arising between the parties hereto, or the failure of the parties hereto to agree as to the matters arising out of this Agreement, with respect to delivery or non-delivery of any Equipment shall be referred to arbitration in New York, New York, in the manner provided in Section 33 of the Time Charter, within two years after the commencement of the Charter Period.

29. This Agreement shall be construed in accordance with the laws of New York and the rights and remedies of the parties hereunder shall be determined in accordance with such laws and for choice of law purposes shall be construed to be an agreement to be performed solely in the State of New York.

30. U.S. Lines agrees that at any time and from time to time, upon the written request of Sea-Land, U.S. Lines will promptly and duly execute and deliver any and all such further instruments and documents and take such further action as Sea-Land may reasonably request in order to obtain the full benefits of this Agreement and of the rights and powers herein granted.

31. Neither this Agreement nor any provision hereof may be changed, waived, discharged or terminated orally but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. This Agreement may be executed in several counterparts, each of which is an original, but all of which together shall constitute one instrument. All amounts expressed herein in terms of Dollars shall mean Dollars in any coin or currency of the United States of America which at the time payment is due shall be legal tender for the payment of public and private debts.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

UNITED STATES LINES, INC.

By JOHN J. McMULLEN
President

[CORPORATE SEAL]

Attest:

ANITA C. TOMAN
Assistant Secretary

SEA-LAND SERVICE, INC.

By M. P. McLEAN
Chairman of Corporation

[CORPORATE SEAL]

Attest:

JOHN W. McCONNELL, JR.
Secretary

STATE OF NEW JERSEY
COUNTY OF UNION } ss.:

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared JOHN J. MCMULLEN, President, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said United States Lines, Inc., a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This 27th day of October, A. D. 1969.

[NOTARIAL SEAL]

EDITH BUGGE
Notary Public in and for
Union County, New Jersey

EDITH BUGGE
Notary Public of New Jersey
My Commission Expires March 3, 1974

STATE OF NEW JERSEY
COUNTY OF UNION } ss.:

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared MALCOM P. MCLEAN, Chairman of Corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of the said Sea-Land Service, Inc., a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This 27th day of October, A. D. 1969.

[NOTARIAL SEAL]

EDITH BUGGE
Notary Public in and for
Union County, New Jersey

EDITH BUGGE
Notary Public of New Jersey
My Commission Expires March 3, 1974

Schedule C

CERTIFICATE OF DELIVERY AND ACCEPTANCE

Sea-Land Service, Inc. does hereby acknowledge and accept the delivery of the Equipment described and listed on the attached list on this day of , 197 , at pursuant to the provisions of Section 2 of that certain Agreement of Lease and Sublease between United States Lines, Inc. and Sea-Land Service, Inc., dated as of October 27, 1969.

SEA-LAND SERVICE, INC.

By

As Its Representative

[Conformed Copy]

EXHIBIT B

GUARANTY OF PERFORMANCE

n consideration of Sea-Land Service, Inc. ("Sea-Land") having entered into, and R. J. Reynolds co Company ("Reynolds") having guaranteed the performance of Sea-Land under, a Time er Party dated as of October 27, 1969 (the "Time Charter Party") between United States Lines, "U. S. Lines") and Sea-Land, and the performance of Sea-Land under the Agreement of Lease ublease dated as of October 27, 1969 (the "Lease") between U. S. Lines and Sea-Land, subject aining the consents required pursuant to the terms of the two agreements referred to in Exhibit to, the undersigned, Walter Kidde & Company, Inc. ("Kidde") hereby guarantees the due and al performance by U. S. Lines, a wholly-owned subsidiary of Kidde, of all obligations, duties and takings of U. S. Lines under and pursuant to the Time Charter Party and the Lease in accordance their respective terms. It is understood that all obligations hereunder of Kidde shall terminate d at such time as U. S. Lines ceases to be a wholly-owned subsidiary, directly or indirectly, of due to causes or circumstances beyond the control of Kidde if, and only if, the capital stock ks of U. S. Lines are transferred to a corporation which assumes such obligations unconditionally writing on substantially the terms of this Guaranty and either (a) such corporation has been pproved in writing by Sea-Land or (b) such corporation has, at the time the agreement with t to such transfer is executed and delivered, financial responsibility comparable to that of Kidde.

dde hereby agrees that its obligations hereunder shall be unconditional, irrespective of the tution of another guarantor for Reynolds as provided for in the Reynolds Guaranty of Per- nce dated October 27, 1969, the absence of any action to enforce the same, the waiver or t by Sea-Land with respect to any of the obligations of U. S. Lines under the Time Charter or the Lease, the recovery of any judgment against U. S. Lines or any action to enforce the or any other circumstance which might otherwise constitute a legal or equitable discharge or se of a guarantor. Kidde hereby waives notice of acceptance hereof, diligence, presentment, d of payment, filing of claims with a court in the event of merger or bankruptcy of U. S. Lines, ght to require a proceeding first against U. S. Lines, protest or notice with respect to any tion of U. S. Lines under the Time Charter Party or the Lease and all demands whatsoever ovenants that this Guaranty will not be discharged except by complete performance of the tions, duties and undertakings of U. S. Lines contained in the Time Charter Party and the Lease.

his Guaranty shall be construed in accordance with the laws of New York and the rights and les of the parties concerned shall be determined in accordance with such laws.

s Witness Whereof, the undersigned has executed this Guaranty of Performance on this 27th f October, 1969.

Walter Kidde & Company, Inc.
(a Delaware corporation)

By James X. Kilbridge
Vice President

EXHIBIT A

(to Kidde Guaranty of Performance)

Purchase Agreement dated as of January 7, 1966 between Walter Kidde & Company, Inc. and the parties listed below, relating to Kidde's 5¾% Senior Notes due 1986 in the principal amount of $20,000,000.

The Travelers Insurance Company
Massachusetts Mutual Life Insurance Company
The Connecticut Mutual Life Insurance Company
Wilmington Trust Company on behalf of Dean & Davis
Lack and Lindsay
The Fidelity Mutual Life Insurance Company
Pan American Life Insurance Company
State Farm Life Insurance Company
Business Men's Assurance Company of America
The Fannie E. Rippel Foundation
The Independent Life & Accident Insurance Company
The Liberty Life Insurance Company
Pennsylvania Railroad System Plan for Supplemental Pensions
Reliance Standard Life Insurance Company
Philadelphia Life Insurance Company
North American Reassurance Company
Peninsular Life Insurance Company
Standard Insurance Company
Employee Retirement Plan — Reliance Insurance Company

Loan Agreement dated December 29, 1967 between Walter Kidde & Company, Inc. and the parties listed below relating to a loan in the principal amount of $45,000,000.

Security First National Bank
Chemical Bank New York Trust Company
Bankers Trust Company
Morgan Guaranty Trust Company of New York
Girard Trust Bank
National Newark & Essex Bank
The Philadelphia National Bank
Continental Illinois National Bank and Trust Company of Chicago
The First National Bank of Boston
Marine Midland Grace Trust Company of New York
The First National Bank of Atlanta
First Union National Bank of North Carolina

[CONFORMED COPY]
EXHIBIT C

GUARANTY OF PERFORMANCE

In consideration of UNITED STATES LINES, INC. ("U. S. Lines") having entered into, and WALTER KIDDE & COMPANY, INC. ("Kidde") having guaranteed the performance of U. S. Lines under, a Time Charter Party dated as of October 27, 1969 (the "Time Charter Party") between U. S. Lines and SEA-LAND SERVICE, INC. ("Sea-Land"), and the Agreement of Lease and Sublease dated as of October 27, 1969 (the "Lease") between U. S. Lines and Sea-Land, the undersigned, R. J. REYNOLDS TOBACCO COMPANY ("Reynolds") hereby guarantees the due and punctual performance by Sea-Land, a wholly-owned subsidiary of Reynolds, of all obligations, duties and undertakings of Sea-Land in accordance with their respective terms under and pursuant to the Time Charter Party and the Lease, provided, however, that in the event of a reorganization of the corporate structure of Reynolds substantially in accordance with the plan of reorganization summarized in the Prospectus of Reynolds dated May 13, 1969, as supplemented on September 11, 1969 (a copy of which has heretofore been delivered to U. S. Lines and Kidde), pursuant to which Reynolds would become a wholly-owned subsidiary of a newly organized company (the "New Company"), Reynolds may cause the New Company to be substituted in lieu of Reynolds as guarantor hereunder. Such substitution shall become effective on delivery to U. S. Lines and Kidde of a Guaranty of Performance duly executed by the New Company and containing substantially the terms hereof other than the provisions relating to the substitution of the New Company. It is understood that all obligations hereunder of Reynolds (or of New Company if it shall have been substituted for Reynolds as guarantor) shall terminate if, and at such time as, Sea-Land ceases to be a wholly-owned subsidiary, directly or indirectly, of the guarantor, due to causes or circumstances beyond the control of the guarantor, if, and only if, the capital stock or assets of Sea-Land (or its parent, McLean Industries, Inc., including Sea-Land) are transferred to a corporation which assumes such obligations unconditionally and in writing on substantially the terms of this Guaranty and either (a) such corporation has been first approved in writing by U. S. Lines or (b) such corporation has, at the time the agreement with respect to such transfer is executed and delivered, financial responsibility comparable to that of the guarantor.

Reynolds hereby agrees that its obligations hereunder shall be unconditional, irrespective of the absence of any action to enforce the same, the waiver or consent by U. S. Lines with respect to the enforcement of any of the obligations of Sea-Land under the Time Charter Party or the Lease, the recovery of any judgment against Sea-Land or any action to enforce the same, or any other circumstance which might otherwise constitute a legal or equitable discharge or defense of a guarantor. Reynolds hereby waives notice of acceptance hereof, diligence, presentment, demand of payment, filing of claims with a court in the event of merger or bankruptcy of Sea-Land, any right to require a proceeding first against Sea-Land, protest or notice with respect to any obligation of Sea-Land under the Time Charter Party or the Lease and all demands whatsoever and covenants that this Guaranty will not be discharged except by complete performance of the obligations, duties and undertakings of Sea-Land contained in the Time Charter Party and the Lease.

This Guaranty shall be construed in accordance with the laws of New York and the rights and remedies of the parties concerned shall be determined in accordance with such laws.

IN WITNESS WHEREOF, the undersigned has executed this Guaranty of Performance on this 27th day of October, 1969.

R. J. REYNOLDS TOBACCO COMPANY
(a New Jersey corporation)

[SEAL]

By H. H. RAMM
Vice President

[CONFORMED COPY]

EXHIBIT D

TIME CHARTER PARTY

TIME CHARTER PARTY (hereinafter called "this Charter"), dated as of October 27, 1969, between UNITED STATES LINES, INC., a Delaware corporation (hereinafter called "Owner"), and SEA-LAND SERVICE, INC., a Delaware corporation (hereinafter called "Charterer").

WHEREAS, Owner desires to let, and Charterer desires to hire, the use of the steam screw vessels, built, now building or now being converted, all as described in Schedule A-1 attached hereto (hereinafter, unless the context otherwise requires, collectively called the "Vessels" and severally, a "Vessel");

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency whereof are hereby acknowledged, the parties agree as follows:

1. *Effective Date; Charter Period.* This Charter and the instruments listed in Schedule A-2 hereto (hereinafter called the "Related Instruments") are all subject to the prior approval of the Federal Maritime Commission (hereinafter called the "Commission") pursuant to Section 15 of the Shipping Act, 1916, as amended. The date which is the 4th day after the date of the Commission's approval of this Charter and the Related Instruments is hereinafter called the "Effective Date"; provided, however, that, subject to cancellation as provided below, (i) if such day is not a business day in the City of New York, N. Y., the Effective Date shall be the first such business day thereafter and (ii) if such day is prior to January 1, 1970, the Effective Date shall be January 1, 1970. If this Charter and such Related Instruments are not approved by the Commission by 5:00 P.M. on December 31, 1969, either party hereto may cancel this Charter, by written notice delivered to the other party, at any time after said date and time and prior to Commission approval. If approval by the Commission is granted on or before or after December 27, 1969 on terms or in circumstances that, in the sole opinion of the party affected, materially adversely affect the economic feasibility of the transaction contemplated by this Charter, the party so affected may cancel this Charter by written notice delivered to the other party hereto at any time until 5:00 P.M. on the 2nd

day after such approval. Each party hereto shall have available at its office (at One Broadway, New York, N. Y., in the case of Owner, and at Fleet and Corbin Streets, Elizabeth, New Jersey, in the case of Charterer) on said 3rd day until 5:00 P.M., and in any event until 11:59 P.M. on December 31, 1969, unless otherwise agreed, its President, one of its Vice Presidents, its Secretary, or its Treasurer, to receive such notice, the name or names of such individuals to be present to be designated by each party to the other no later than 10:00 A.M., December 31 in the latter instance and within twenty-four hours after Commission approval in all other cases.

Subject to the foregoing terms of this Section 1 and upon the terms and conditions of this Charter, Owner hereby lets and agrees to let and Charterer hereby hires and agrees to hire the use of the Vessels for a term of 20 years beginning at 12:01 A.M. on the second Monday following the Effective Date or on such earlier date as the parties hereto may agree upon. Such twenty year term shall be called the "Charter Period", which may be extended pursuant to Section 27 hereof.

2. *Construction; Inspection.* 2.1. In respect of each of the Vessels which is being constructed or converted on the Effective Date, Owner shall keep Charterer informed from time to time as to the progress of construction or conversion, and Owner shall make no substantial changes in the plans and specifications delivered to Charterer pursuant to clause (ii) of Section 3.4 without the prior written consent of Charterer; provided, however, in the event Charterer shall refuse to consent to the incorporation in the contract work of any Value Engineering proposal (as defined in the relevant construction or conversion contract) advanced by the shipyard, Charterer shall indemnify and hold harmless Owner against any loss or damage which Owner may sustain by reason of such refusal. Owner will exercise its best efforts to obtain for Charterer the right, exercisable (at Charterer's own expense) at any time and from time to time after the Effective Date, to inspect such Vessel at all times during the course of the performance of the work in respect of such Vessel and to attend any and all dock trials and trial trips and drydocking prior to delivery to satisfy itself that such Vessel has been constructed in accordance with such applicable plans and specifications, and Owner shall keep Charterer advised of each scheduled dock trial, trial trip and dry-

docking. During the course of construction or conversion after the Effective Date, Owner shall exercise such rights as it may have under the relevant construction or conversion contracts to incorporate in the contract work such changes as Charterer may request, provided that all costs and expenses of any kind which may be incurred by Owner as a result of such changes shall be borne by Charterer, and provided further that Owner's obligations shall not include the obligation to make any change which would violate the provisions of any collective bargaining or other labor agreement by which Owner may be bound, or subject Owner to any labor difficulties on other ships it may own.

2.2. The fact that Charterer is granted certain rights and privileges under Section 2.1 hereof shall in no way be construed as relieving Owner from the obligation to supervise the construction or conversion of each of the Vessels being constructed or converted.

2.3. Charterer shall hold Owner harmless and indemnify Owner fully against all liability of any kind or nature whatsoever arising out of the exercise by Charterer of any right or privilege under Section 2.1 hereof.

3. *Delivery and Redelivery.* 3.1. Each of the Vessels which has been constructed or converted prior to the beginning of the Charter Period shall be delivered to Charterer by Owner on the date of the commencement of the Charter Period or promptly thereafter upon completion of any voyage in progress on such date. Each of such Vessels shall be placed at the disposal of Charterer at the port of New York in such dock or at such wharf or place as Charterer may direct. Upon delivery, Owner agrees that each of such Vessels shall be in every way adequately manned, stored and equipped and in the highest classification and rating of the American Bureau of Shipping for vessels of the same age and type with no outstanding recommendations, such classification to be evidenced by a Certificate of Confirmation of Class dated within 48 hours of the time of delivery of such Vessel and delivered to Charterer prior to the delivery of such Vessel. Simultaneously with such delivery, Charterer shall accept such Vessel for service under this Charter. Any Vessel which becomes an actual, constructive or compromised total loss, or which is seized, forfeited or requisitioned for title, prior to the beginning of the Charter Period shall be

deemed deleted from the Charter without affecting Charterer's obligation to accept the other Vessels hereunder and the Option Price provided for in Section 27 hereof shall be reduced in the same manner as is provided in Section 21.1(c) hereof in respect of a Vessel lost after the beginning of the Charter Period. In the event of damage affecting any Vessel's classification occurring prior to delivery of such Vessel to Charterer hereunder, Owner at its own expense shall make such repairs as shall be necessary to place such Vessel in class, with no outstanding recommendations, prior to delivery hereunder and Charterer shall accept such Vessel when such repairs are completed, or upon the termination of the voyage then in progress, whichever is later.

3.2. As promptly as practicable after the beginning of the Charter Period, Owner shall furnish to Charterer a schedule of cargo booked by Owner prior to the beginning of the Charter Period for carriage by any of the completed Vessels, after the beginning of the Charter Period, and Charterer shall perform such bookings and shall pay Owner a commission of 11% of the ocean freight in respect thereof.

3.3. Each of the Vessels which is being constructed or converted at the beginning of the Charter Period shall, simultaneously with its delivery by the relevant shipyard to Owner, be placed at the disposal of Charterer at such shipyard, but Charterer shall not be obligated to accept such Vessel which is not adequately manned, stored and equipped and substantially in the condition required upon delivery to Owner by the relevant construction or conversion contract and the plans and specifications heretofore delivered to Charterer. No delay by a shipyard in the construction or conversion of a Vessel shall affect Charterer's duty to accept such Vessel. In the event of the loss of or damage to any such Vessel prior to its delivery to Owner, under circumstances which permit termination of the relevant construction or conversion contract, such Vessel shall be deemed deleted from this Charter without affecting Charterer's obligation to accept the other Vessels hereunder. Charterer shall have no claim to any of the insurance proceeds payable with respect to such loss or damage, and the Option Price provided for in Section 27 hereof shall be reduced in the same manner as is provided in Section 21.1(c) hereof in respect of a Vessel lost after the beginning of the Charter Period.

3.4. In the event that Charterer determines at any time, whether before delivery of any Vessel or subsequent thereto, that such Vessel does not meet the plans and specifications or requirements of its construction or conversion contract, Owner will in its own name, but at Charterer's expense and (to the extent Charterer's determination shall be in error) risk, on request of and under direction from Charterer after the beginning of the Charter Period, take all action necessary to obtain the benefit of all of the rights and privileges which Owner has under the relevant construction or conversion contract. In such event, upon Charterer's written request, Owner shall assign to Charterer all of its right, title and interest in and to all rights, warranties and guarantees which Owner has under the relevant construction or conversion contract in respect of any and all guarantees of materials and workmanship appertaining to such Vessel, and thereupon Owner shall have no further obligation under the first sentence of this Section 3.4, and, provided Charterer shall pay or reimburse Owner for any cost and expense, Owner will cooperate with Charterer and will furnish Charterer such documents and other assistance as Charterer may reasonably request in order to enable Charterer to enforce such rights, warranties and guarantees. Prior to the execution and delivery of this Charter, Owner has delivered to Charterer the relevant construction or conversion contract with respect to each of the Vessels and (i) as to each of the Vessels already completed, a full set of contract plans and specifications and (ii) as to each of the Vessels being constructed or being converted, a full set of contract plans and specifications, and Owner shall make available to Charterer all other plans and specifications which Charterer may reasonably request. A final decision under the disputes clause of the relevant construction or conversion contract shall be binding on the parties hereto.

3.5. *No Warranties. Except for the warranties made by Owner in Section 4.2 hereof, Owner makes no warranty, and none shall be implied hereunder, as to the seaworthiness, condition, fitness for use or merchantability of any Vessel, or as to any other matter or thing affecting any Vessel, all such warranties being expressly disclaimed.* Except as otherwise noted by Charterer in respect of any out-standing class recommendations on any certificate of acceptance hereunder, acceptance of each of the Vessels delivered hereunder shall be conclusive

proof of such Vessel's compliance, as between Owner and Charterer, with all requirements of this Charter.

3.6. Charterer shall accept and pay for all diesel and fuel oil, water and unbroached stores on board each of the Vessels upon its delivery hereunder, and Owner shall pay for each of such items on board each of the Vessels which is redelivered to Owner hereunder at the prices therefor obtaining at each port of delivery or redelivery, as the case may be.

4. *Mortgages; Encumbrances.* 4.1. Owner has delivered to Charterer true copies of each of the mortgages covering any of the Vessels on the date hereof, which mortgages are described in Schedule B hereto. Owner covenants with respect to such mortgages (hereinafter called the "existing mortgages") as follows:

(a) At the beginning of the Charter Period, the existing mortgages will be in the form heretofore delivered to Charterer, and after the beginning of the Charter Period Owner will not agree to any amendment of any of the existing mortgages without the prior written consent of Charterer which will not be unreasonably withheld; and

(b) Owner will, after the beginning of the Charter Period, promptly notify Charterer if it believes it will be unable to comply with any material provision of any existing mortgage and deliver to Charterer any notice of default with respect to any of the existing mortgages received by Owner, and if Charterer desires to and is permitted by the relevant mortgagee to comply with such provision or cure such default, Charterer may comply with such provision or cure such default and may (unless such default is caused by Charterer's breach of any of its obligations hereunder) deduct the expense of complying or curing such default from the Fixed Element (hereinafter defined) of charter hire payable with respect to the Vessels, and Owner shall cooperate fully with Charterer in connection with any action taken to so comply or cure.

4.2. Owner covenants with respect to any mortgage (other than any Title XI insured mortgage referred to in Section 4.3) placed

on any of the Vessels after the beginning of the Charter Period (hereinafter collectively called "future mortgages" and severally, a "future mortgage") as follows:

(a) Owner will furnish to Charterer (i) at least 15 days prior to execution a copy of each proposed future mortgage and of all proposed changes in or drafts thereof and (ii) an executed counterpart of such future mortgage within ten days after the execution and delivery thereof by Owner;

(b) the provisions of each future mortgage with respect to insurance on the relevant Vessel or Vessels shall be subject to the prior written approval of Charterer;

(c) no future mortgage shall contain any provision which Charterer reasonably determines would materially adversely affect any of the Charterer's rights under this Charter and as to which Charterer shall notify Owner in writing at least 5 days prior to the date which Owner shall have notified Charterer will be the date of execution of such mortgage; and each future mortgage shall provide that so long as Charterer is not in default pursuant to the terms of Section 25 hereof, the mortgagee under such future mortgage will not exercise its rights or remedies thereunder in such a way as to materially interfere with Charterer's use under this Charter of the Vessel or Vessels covered by such future mortgage;

(d) each future mortgage shall provide that (i) Charterer may purchase the mortgaged Vessel or Vessels covered thereby in the event the option granted by Section 28 hereof is exercised by Charterer, and (ii) upon such purchase, Charterer shall assume such future mortgage and any note or bond secured thereby (without payment of any premium or penalty or any increase in the interest rate) by the execution and delivery of an instrument of assumption in form and substance satisfactory to the mortgagee concerned; and

(e) each future mortgage shall contain a consent of the mortgagee under such future mortgage to the exercise of the rights granted to Charterer by the provisions of Section 13 hereof.

Owner warrants that except for the existing mortgages and any Title XI mortgage (if placed by then), each of the Vessels will be, on the date of its delivery hereunder, free and clear of all liens or encumbrances except liens or encumbrances arising in the usual course of business and not outstanding for more than 30 days (which liens and encumbrances Owner shall be obligated to discharge at its expense) and except liens or encumbrances adequately covered by insurance (after giving effect to any deductibles or franchises under the applicable policies) and except encumbrances arising out of the applicable Construction-Differential Subsidy Contract or the terms of §§ 802 or 902 of, or Contracts of Sale pursuant to, the Merchant Marine Act, 1936, as amended.

4.3. Owner covenants with respect to any mortgage given with respect to any of the Vessels which is insured pursuant to Title XI of the Merchant Marine Act, 1936, as amended, and with respect to any note purchase agreement, bond purchase agreement or other document executed and delivered in respect of such Title XI mortgage before or after the beginning of the Charter Period (hereinafter collectively called the "Title XI documents" and severally a "Title XI document") as follows:

(a) Owner will furnish to Charterer (i) at least 20 days prior to the execution thereof a copy of each proposed Title XI document and of all proposed changes in or drafts thereof, and (ii) an executed counterpart of each Title XI document within 10 days after the execution and delivery thereof;

(b) No Title XI document shall contain any provision which Charterer reasonably determines would materially adversely affect any of Charterer's rights under this Charter and as to which Charterer shall notify Owner in writing at least 10 days prior to the date which Owner shall have notified Charterer will be the date of execution of such document (it being understood, however, that the fact that any such Title XI mortgage shall not be subordinate in any way to this Charter shall not be deemed materially adverse to the rights of Charterer hereunder); and

(c) Owner will, after the beginning of the Charter Period, promptly notify Charterer if it believes it will be unable to comply with any material provision of any Title XI mortgage and deliver to Charterer any notice of default with respect to

any such Title XI mortgage received by Owner, and if Charterer desires to and is permitted by the mortgagee of such Title XI mortgage to comply with such provisions or cure such default, Charterer may comply with such provision or cure such default and may (unless such default is caused by Charterer's breach of any of its obligations hereunder) deduct the expenses of complying with or curing such default from the Fixed Element (hereinafter defined) of charter hire payable with respect to the Vessels, and Owner shall cooperate fully with Charterer in connection with any action taken to so comply or cure.

4.4. Charterer shall not require any action of Owner or take any action on its own part which would cause or result in the occurrence of any default under any existing or future mortgage or Title XI mortgage referred to in Section 4.3 hereof. Owner undertakes to perform, or comply with, all material provisions of each existing mortgage, each future mortgage, each Title XI mortgage, each relevant Construction-Differential Subsidy Contract and each relevant Contract of Sale pursuant to the Merchant Marine Act, 1936, as amended.

5. *Operation and Use of Vessels.* 5.1. Owner agrees that it will operate each of the Vessels in an efficient and proper manner and will engage and employ her Master, Officers and Crew, who shall be deemed Owner's servants. The Master of each of the Vessels shall be under the orders and directions of Charterer in all matters regarding employment of such Vessel, agencies and other arrangements. If Charterer shall be dissatisfied with the conduct of the Master or Officers of any of the Vessels, Owner will make such changes in such appointments as Owner shall deem necessary after investigation. Owner shall provide and pay for all items constituting expenses of operating and husbanding each of the Vessels and includible in the Variable Element of charter hire as described in Section 7.2 hereof. Charterer shall provide and pay for all diesel oil and fuel oil, and for all fresh water, and for all port charges, light dues, docking dues, Canal tolls, dues and fees, pilotage, Consular fees (except those pertaining to the Master, Officers and Crew of any of the Vessels), tugs for assisting such Vessel in, about and out of port for the purpose of carrying out this Charter, agency fees, commissions, expenses of loading and unloading cargoes (including any sums or assessments payable under any relevant shoreside contract), and all other charges other than those stated in this Charter as payable by Owner.

5.2. Charterer shall have the full use of each of the Vessels, but not more than such Vessel can reasonably stow on or under deck and safely carry, Owner reserving proper and sufficient space for such Vessel's Officers and Crew, Master's cabin, tackle, apparel, furniture, fuel, provisions and stores. Subject to the terms of the relevant Construction Differential Subsidy Contracts, relevant Contracts of Sale pursuant to the Merchant Marine Act, 1936, as amended, all applicable laws (including, without limitation, the Merchant Marine Act, 1936, as amended), governmental regulations and orders, whether now or hereafter in effect and, provided the Vessels shall always be held covered by insurance (which it shall be Charterer's obligation to determine), each of the Vessels may be used in such lawful trades throughout the world as Charterer shall direct. In the event Charterer shall use any national defense feature incorporated in any of the Vessels or employs any of the Vessels in the coastwise or intercoastal trade, Charterer shall pay or indemnify and hold harmless Owner against any amounts which may become payable to the United States of America because of such use. Charterer shall pay 50% of the expenses of Owner in respect of the construction or conversion of any of the Vessels which are not payable by Owner pursuant to the terms of the construction or conversion contract covering such Vessel to the extent they are attributable to the existence of this Charter. Charterer's obligations under this Section 5.2 shall not be affected by any misrepresentation by any party in any of the Related Instruments or by any breach of any warranty in the Related Instruments.

5.3. Charterer will furnish the Master of each of the Vessels from time to time with all requisite instructions and sailing directions in writing. The Masters and the Engineers of each of the Vessels shall keep full and correct logs of all voyages, which (including rough logs) shall at all times be available to Charterer or its agents, and abstracts thereof, or such other forms or reports as Charterer may reasonably require, shall be delivered to Charterer at the end of each voyage.

5.4. Each of the Vessels shall load and discharge at any safe place or wharf or alongside vessels or lighters designated and procured by Charterer, provided that such Vessel can proceed thereto, lie thereat and depart therefrom always safely afloat at any time or tide. Lighterage shall be at the expense and risk of Charterer.

5.5. Charterer may order any of the Vessels to enter or leave any port or place which is ice bound or where lights, lightships, markers or buoys are likely to be withdrawn by reason of ice and may direct such

Vessel to Lotos; provided always that the Master of such Vessel may in his discretion decline to follow such orders or directions if in his opinion the safety of such Vessel will be imperiled. If on account of ice the Master of any of the Vessels reasonably considers it dangerous to remain at the loading or discharging place for fear of such Vessel being frozen in and or damaged, he is at liberty and has the responsibility to sail to a convenient open place and await Charterer's further instructions. Notwithstanding the foregoing, Charterer shall indemnify and hold harmless Owner and each of the Vessels from all expense, liability or loss which Owner, Charterer or such Vessel may sustain or incur by reason of such orders or direction, even if caused in whole or in part by the negligence or other fault of Owner, its agents or servants.

5.6. Charterer shall be liable to Owner for and shall indemnify and hold harmless Owner and every Vessel against any tax (other than taxes with respect to cargo carried pursuant to Section 3.2), fine, legal or other expense, liability or loss, sustained or incurred by or levied on Owner, Charterer, any Vessel or any hire payable hereunder, in connection with any cargo shipped hereunder or the transportation of such cargo or by reason of having such cargo on board a Vessel, for any reason whatsoever, including fault or negligence of Owner or of its agents or servants with respect to such cargo and including, without limitation, liability for damage to or loss of cargo itself.

5.7. The foregoing terms of Section 5 shall apply only to such Vessels as are delivered to Charterer hereunder.

6. *Not a Demise.* Nothing in this Charter shall be deemed to create a demise of any of the Vessels to Charterer.

7. *Charter Hire.* 7.1. The charter hire to be paid hereunder in respect of each of the Vessels shall consist of two components: Fixed Element charter hire (the "Fixed Element") and Variable Element charter hire (the "Variable Element"). The Fixed Element shall be in the amount per calendar month set forth as to each of the Vessels in Schedule C hereto and shall be payable, in New York Clearing House funds, on the 15th of each month of the Charter Period; provided, however, that (i) if the Charter Period does not begin on the first day of a calendar month, the amount of the Fixed Element payable with respect to each of the Vessels for the number of days remaining in the calendar month in which the Charter Period begins and also for the number of days elapsed in the calendar month in which the Charter Period ends, shall be equal to the product obtained by multiplying

said calendar monthly Fixed Element for such Vessel by a fraction, the numerator of which shall be the number of such days in the month constituting part of the Charter Period and the denominator of which shall be the number of days in such calendar month, (ii) if the Charter Period begins after the 15th day of a calendar month, the first payment of the Fixed Element in respect of each of the Vessels, in the amount provided for in clause (i) of this sentence, shall be payable on the day the Charter Period begins and (iii) if the Charter Period ends before the 15th day of a calendar month, the last payment of the Fixed Element for each of the Vessels, in the amount provided for in clause (i) of this sentence, shall be payable on the last day of the Charter Period. The Fixed Element shall be paid with respect to each of the Vessels, whether or not the same has been delivered hereunder, without abatement, deduction, withholding or offset of any kind except **as otherwise expressly provided in Section 4.1, Section 4.3, Section 7.4, Section 7.5, Section 21 and Section 22 hereof. To the extent the Fixed** Element is paid for periods prior to the delivery of any Vessel to Charterer hereunder, such payment shall be subject to the terms of Sections **27 and 28 of this Charter.**

7.2. Subject to the terms of next to the last paragraph of this Section 7.2, the Variable Element for each of the Vessels shall consist of all expenses of Owner of an operational or husbanding nature incurred by Owner in respect of such Vessel, including, without limitation by this enumeration, expenses in respect of (i) manning, (ii) equipping, (iii) supplying, (iv) maintaining, (v) repairing, (vi) insuring (including any costs of collection of insurance proceeds and payment of the portion of any claim within the deductible or franchise of any insurance policy), (vii) structural or other changes (which shall not be deemed to include the construction or conversion of the Vessels being constructed or converted on the Effective Date) required by the American Bureau of Shipping (or other classification society referred to in Section 9 hereof) or any governmental agency having jurisdiction in respect of such Vessel or which shall be required by any law or labor agreement hereafter coming into effect and affecting such Vessel, (viii) discharging of liens resulting from the operation or husbanding of such Vessel, (ix) all property and excise taxes, license fees, permit fees or other taxes or charges which may be assessed against, levied or imposed upon or with respect to such Vessel or upon the use thereof; all dues, assessments, governmental charges, fines and penalties lawfully im-

posed in respect of operating or husbanding such Vessel; and all franchise, gross receipts or other taxes assessed against Owner, which, and to the extent any such tax, would not have been so assessed but for the operation by Charterer of such Vessel in the taxing jurisdiction (provided that (1) Charterer shall not be obligated to pay any tax, or any penalty, fine or interest thereon, on or measured by, the income of Owner imposed by any Federal, State or local government or taxing authority in the United States of America, (2) Charterer's obligation in respect to any such franchise, gross receipts or other tax assessed against Owner shall be reduced where such tax is paid to a foreign government to the extent such amount is available and usable as a credit or deduction with respect to Owner's United States income tax and (3) Charterer shall not be obligated to pay any such taxes, dues, assessments, license fees, permit fees, governmental charges, fines or penalties if (and to the extent that) the same are being contested by Charterer in good faith and by appropriate proceedings so long as such proceedings do not involve any material risk of sale, forfeiture or loss of such Vessel) and (x) any other cost reasonably related to the operating or husbanding of such Vessel pursuant to the terms of this Charter (but no item of overhead expense shall be included in the Variable Element, since overhead is deemed to be covered by the Fixed Element). Charterer shall pay to Owner the Variable Element, in New York Clearing House funds, on the 15th day of each calendar month; provided, however, that (a) if the Charter Period does not begin prior to the 15th day of a calendar month, the amount of the Variable Element payable in respect of the remainder of the calendar month in which the Charter Period begins shall be payable on the day the Charter Period begins and (b) if the Charter Period ends before the 15th day of a calendar month, the amount of the Variable Element payable in respect of the calendar month in which the Charter Period ends shall be payable on the last day of the Charter Period.

Owner shall submit to Charterer as soon as practical before commencement of the Charter Period a reasonable estimate of the Variable Element, substantially in the form as shown on Schedule D, attached hereto, for the first calendar year of the Charter Period or the remaining portion thereof and for the first calendar quarter, or portion thereof, to be incurred by months. Charterer shall, prior to the giving by Owner of the estimate of the Variable Element provided for in the immediately preceding sentence and prior to each period stated in the immediately following sentence, deliver to Owner, in writing, a state-

ment of the trade or trades in which each of the Vessels delivered hereunder are expected to be employed for the relevant periods; provided, however, that Charterer may, in the interim between such statements, vary such trade or trades at its discretion, in which case Charterer shall give prompt notice thereof to Owner, who shall within 15 days thereafter furnish to Charterer revised estimates of the Variable Element for the current or ensuing months in the pertinent calendar quarter. During each period November 15th to December 1st thereafter in the Charter Period, Owner shall submit to Charterer such estimate for the next ensuing calendar year (or the remaining portion of the Charter Period if less than a calendar year) and for the first quarter or portion thereof to be incurred by months. Not less than 15 days prior to the commencement of each subsequent calendar quarter, Owner shall also furnish to Charterer on the same form an estimate of the Variable Element to be incurred by months over the forthcoming calendar quarter or the remaining portion thereof. The total sum of these estimated expenses for each calendar month (or the relevant portion thereof) shall be the amount of the Variable Element for each such month. Charterer shall pay to Owner on the 15th day of each calendar month (except as otherwise provided in clause (ix) of the first paragraph of this Section 7.2) the amount as shown in such estimate for such calendar month (or the relevant portion thereof). Within 30 days after the closing of each calendar quarter, Owner shall furnish to Charterer a statement of all said expenses actually incurred during the preceding calendar quarter or the relevant portion thereof. If the total sum of such expenses exceeds the total amount of the Variable Element paid by Charterer for such calendar quarter or the relevant portion thereof, the additional amount due Owner shall be added to the next monthly Variable Element payment. If the total sum of such expenses is less than the total amount of Variable Element paid by Charterer for such calendar quarter or the relevant portion thereof, the excess amount due Charterer shall be deducted from the next monthly Variable Element payment. However, nothing in these arrangements shall preclude reimbursement of costs to Owner due to late submission of bills by vendors or other clerical delays. Such charges shall be included in any subsequent quarterly estimate.

Owner covenants that it will, throughout the Charter Period, use due diligence with respect to the incurring of expenses of an operational or husbanding nature in respect of the Vessels, so that the amount of the Variable Element shall be reasonable in amount.

Owner shall keep proper and detailed books, accounts and records for each of the Vessels in accordance with generally accepted accounting practices supporting the payment of the Variable Element made by Charterer and shall permit Charterer, or its designated agent, at the end of each calendar year (or portion thereof after the beginning and ending of the Charter Period if the Charter Period does not begin on the first day of January) at Charterer's expense, upon three days written notice given not later than 45 days after the end of any calendar year of the Charter Period or the relevant portion thereof, but during normal office hours, to audit the books, accounts and records to verify the propriety and accuracy of such payments.

7.3. Charterer shall not withhold payment to Owner in respect of any disputed item of the Variable Element unless and until a favorable arbitration award as to such item is granted in an arbitration proceeding pursuant to Section 33 hereof. Within 45 days after the completion of each audit provided for in Section 7.2 hereof, Charterer shall notify Owner of each item of the Variable Element for such preceding calendar year or relevant portion, as the case may be, to which Charterer objects, and if Owner does not agree to any such objected item within 20 days after such notice is received, each such unagreed item shall be submitted to arbitration pursuant to Section 33 hereof within 30 days after such notice is received, or each such unagreed item shall be deemed waived; provided, however, that the aggregate amount of the item or items of the Variable Element for any such calendar year of which Charterer shall so notify Owner must be in excess of $150,000 for such calendar year and in excess of a pro-rata amount of such aggregate amount for any period of less than a calendar year. If Charterer obtains a favorable award in any such arbitration, Charterer may deduct the amount thereof from the Variable Element of charter hire unless Owner reimburses Charterer in such amount.

7.4. Any amount received by Owner as liquidated damages for late delivery of the Vessel concerned under any construction or conversion contract, less the expense of collection thereof, shall be deducted by Charterer from the next maturing payment due in respect of the Fixed Element of charter hire for the Vessels. Owner shall

notify Charterer promptly in writing as to each amount of said liquidated damages collected and the expenses of collection thereof.

7.5. If for any reason whatsoever, any Vessel which is being constructed or converted at the beginning of the Charter Period is not delivered within 90 days after such Vessel's scheduled delivery date by the relevant shipyard as set forth in Schedule A-1, the Fixed Element with respect to such Vessel shall cease on such 90th day. If and when such Vessel is delivered hereunder, the Fixed Element shall commence with respect to such Vessel as of the date of her delivery and the first payment thereof shall be made on the 15th day of the calendar month next following said delivery date.

8. *Documentation.* Each of the Vessels is, or will be upon her delivery hereunder, documented in the name of Owner under the laws of the United States of America, and Owner throughout the Charter Period will maintain such documentation under such laws. Neither Owner nor Charterer will do or permit anything to be done which might affect such documentation of any of the Vessels.

9. *Maintenance.* Owner will (a) maintain each of the Vessels and her equipment in good condition, working order and repair, (b) keep such Vessel properly manned, (c) maintain each of the Vessels in such condition as will keep her in the highest classification and rating of the American Bureau of Shipping (or other classification society chosen by Owner and acceptable to Charterer) for vessels of the same age and type and annually, during each February of the Charter Period, will furnish to Charterer a certificate issued by the American Bureau of Shipping (or such other classification society) for each of the Vessels evidencing the maintenance of such classification and rating, (d) comply with all applicable laws or regulations hereafter adopted or changes in the rules or regulations of such classification society in respect of each of the Vessels and (e) cause each of the Vessels to be overhauled when necessary and to be drydocked, cleaned and bottom painted when necessary, and Charterer shall make such Vessel available for each survey required by the classification society concerned; provided that, if any of the Vessels shall be laid up pursuant to Section 26 hereof or shall be on an extended voyage, such overhaul, drydocking, cleaning and bottom painting may be delayed until such Vessel shall be reactivated or shall

complete such extended voyage, as the case may be, but only if such delay would not prejudice the maintenance of such Vessel's classification as provided in clause (c) of this Section 9 or the proper upkeep of such Vessel. Notwithstanding the foregoing terms of this Section 9, drydocking shall, insofar as is practicable, be at Charterer's convenience. Charterer shall indemnify and hold harmless Owner from any liability of Owner, whether to Charterer or others, arising by reason of a refusal by Charterer to consent to the timely discharge by Owner of its obligation under this Section 9 after request by Owner, its agents or servants, for such consent.

10. *Inspection.* Owner will permit the representatives of Charterer to inspect each of the Vessels at any time on reasonable notice, but inspection in drydock shall be made only when such Vessel shall be in drydock as provided in Section 9 hereof. Owner will notify Charterer of each such proposed drydocking as far in advance as practicable.

11. *No Frustration.* This Charter shall not be deemed subject to frustration for any reason whatsoever; provided, however, that the terms of this Section 11 shall not be considered to have any effect on (i) cessation of, or deduction from, the charter hire expressly permitted by any provision contained in this Charter, (ii) the adjustments or deductions provided for in Sections 27 and 28 hereof, or (iii) the right of either party hereto to claim damages for any failure in performance hereof by the other party, but in the event any such damages shall become payable to Charterer there shall be no right of offset against charter hire except to the extent permitted by Section 7.3.

12. *Severability.* Either party may at any time and from time to time during the Charter Period, by notice served on the other, require that one or more of the Vessels be deleted from this Charter and made the subject of a separate time charter for the balance of the Charter Period, each such separate time charter to contain, (i) all of the terms and conditions identical to those contained in this Charter with respect to such Vessel or Vessels except those terms and conditions that may require a change solely to reflect the deletion or deletions from this Charter and (ii) a cross-default provision pursuant to which a default under this Charter shall be a default under each such separate charter, and a default under any such separate charter shall be a default

under this Charter and under every other such separate charter, whether then or thereafter in existence. The party serving such notice shall bear all costs and expenses, including, without limitation, all printing, fees and legal expenses of the other party, incurred in consummating such request. No such severance shall prejudice the rights of either party, nor any assignment of Fixed Element theretofore made by Owner, Charterer agreeing to execute and deliver all documents reasonably necessary to secure to any prior assignee of any of the Fixed Element of charter hire to the Vessel or Vessels to be placed under each such separate charter the assignment of such Fixed Element. In the case of each such severance, appropriate amendments shall be made to this Charter, including, without limitation, an appropriate reduction in the Option Price as defined in Section 27 hereof. No such severance shall give to Charterer the right to purchase less than all the Vessels to be purchased pursuant to Section 27 or Section 28 hereof, and the equivalent section in each separate charter shall so provide.

13. *Changes.* Except as required by Section 9, Owner will make no structural change in any Vessel and no change in her machinery or boilers without, in each instance, the prior written approval of Charterer. Subject to the terms of any existing mortgage or of any Title XI insured mortgage referred to in Section 4.2 hereof, Charterer shall have the right, during the Charter Period, to make such structural or other changes in any of the Vessels and the right to install any gear or equipment it may require in addition to that on board any of the Vessels at the time of her delivery; provided that such changes and installations are accomplished at Charterer's expense. If Charterer does not exercise the purchase option provided for in Sections 27 or 28 of this Charter, Charterer, prior to her redelivery hereunder, shall remove any such gear or equipment and shall restore any Vessel in which Charterer has made any such changes or installations to the condition obtaining at the time of delivery of such Vessel hereunder, reasonable wear and tear excepted.

14. *Bills of Lading.* Bills of Lading shall be in Charterer's usual form, but shall, unless otherwise agreed, contain the clauses set forth in Schedule E hereto, and shall, except as otherwise agreed, be signed at any rate of freight Charterer or its agents may direct. The carriage of cargo under this Charter and under all Bills of Lading shall

be subject to such clauses and to the statutory provisions referred to therein. Charterer is hereby authorized to sign Bills of Lading on behalf of each Master. Charterer shall indemnify Owner from all consequences or liabilities that may arise from Charterer or its agents or any Master, at the request of Charterer or any of its agents, signing Bills of Lading or other documents, or from any irregularity in such papers supplied by Charterer or its agents.

15. *Liens.* 15.1. Neither Owner, Charterer, the Master of any of the Vessels nor any other person has or shall have any right, power or authority to create, incur or permit to be placed or imposed upon any of the Vessels, any lien, charge or encumbrance whatsoever, other than any mortgage covering such Vessel permitted by Section 4 of this Charter, the lien of Charterer pursuant to Section 15.2 hereof and liens for wages of the Master and Crew and salvage. Owner will place and keep prominently displayed in the Master's cabin and in the chart room of each of the Vessels a printed notice, framed under glass, reading as follows:

"NOTICE OF TIME CHARTER

This vessel is covered by a Time Charter dated as of October 27, 1969, between the Owner of this vessel and Sea-Land Service, Inc. Under the terms of said Time Charter, neither said Owner, said Charterer, the Master nor any other person has or shall have any right, power or authority to create, incur or permit to be placed or imposed on this vessel any lien, charge or encumbrance whatsoever, other than any mortgage permitted by the terms of said Time Charter, the lien of the Charterer under said Time Charter and liens for wages of the Master and Crew and salvage."

Each of such notices shall be of such size that the paragraph of reading matter shall cover a space not less than 4 inches wide and 6 inches long.

15.2. Owner shall have a lien on all cargoes and sub-freights for all amounts due from Charterer under this Charter, and Charterer shall have a lien (which shall not be enforced except after the termination of the Charter Period or except upon the occurrence of any of the events specified in clauses (i), (ii) and (iii) of Section 28 hereof)

on the Vessels for Prepaid Hire, as hereafter defined, and all other moneys paid in advance and not earned and for any damages or other amounts due Charterer under this Charter.

16. *Insurance*. During the Charter Period, in addition to any insurance required under any mortgage and any requirements of, or pursuant to, any relevant Con-truction-Differential Subsidy Contract or Contract of Sale pursuant to the Merchant Marine Act, 1936, as amended, Owner will carry insurance on or with respect to each of the completed Vessels (whether or not delivered hereunder) in such amounts, in such form (including, without limitation, the form of the loss payable clause and the designation of named assureds; provided, however, that in each case Owner, its parent, subsidiary and related companies shall be named as assureds, and Owner shall be named as one of the loss payees) and against such risks as Charterer shall in writing direct and upon request will furnish Charterer with copies of the policies or other appropriate evidence of such insurance. However, (i) all hull and machinery insurance (including war risk hull and machinery insurance) in respect of total loss on each of the Vessels shall, in any case, be required by Charterer to be placed with American or British underwriters as per the usual American Institute Time (Hulls) and American Institute War Risk and Strikes and Automatic Termination and Cancellation Clauses (Time) Hulls forms, if available, in an amount sufficient to pay to Owner the amount provided for in Section 21.1 hereof and (ii) Charterer shall agree to any insurance coverage of the Owner's possible liabilities in respect of the Vessels recommended by an independent marine insurance broker selected by Owner and satisfactory to Charterer. To the extent that Charterer or any underwriter requires any deductible or franchise in any insurance carried in respect of the Vessels, Charterer shall be responsible for the amount thereof in case of a loss to which any such deductible or franchise applies. Owner will make all proofs of loss and take or cause to be taken all other action necessary or appropriate to effect collections from underwriters of claims for loss, damage or expense (a) covered by any hull and machinery insurance and any collision liability coverage included in any protection and indemnity insurance and (b) in respect of personal injuries covered by the protection and indemnity insurance or other liability insurance. If necessary, Charterer will sign such claim papers and other documents and take such action (including, without limitation, the furnishing of witnesses)

and furnish such information as Owner may reasonably request in this connection. All claims for loss or damage with respect to cargo shall be processed by Charterer's claims department and all protection and indemnity insurance or other liability insurance shall name both Owner and Charterer as assureds. Charterer will make all proofs of loss and take or cause to be taken all other action necessary or appropriate to effect collection from underwriters of claims for loss, damage or expense in respect of loss or damage to cargo covered by such protection and indemnity insurance or other liability insurance. Owner shall immediately forward to Charterer all claim papers, process or other documents related to any cargo claim received by Owner and shall sign such claim papers and other documents and take such action (including, without limitation, the furnishing of witnesses) and furnish such information as Charterer may reasonably request in connection with all claims for loss or damage with respect to cargo. Charterer may place any insurance Charterer desires in respect of (i) any of the Vessels or (ii) Charterer with respect to any of the Vessels; provided, however, that any required consent of underwriters of the insurance carried pursuant to the first sentence of this Section 16 be first obtained by Charterer, and provided further, that each such policy so placed by Charterer shall either name Owner, its parent, subsidiary and related companies as assureds or contain an express waiver of subrogation in form satisfactory to Owner. Charterer shall notify Owner of any such insurance and shall furnish Owner with copies of policies or other appropriate evidence of such insurance.

Owner and Charterer shall cause their respective underwriters or insurance brokers to agree in writing for the benefit of the other party hereto that any insurance carried by either party pursuant to this Section 16 shall not be cancelled and that no reduction in coverage made therein except upon 10 days prior written notice to the other.

17. *Advances by Charterer.* Charterer in its discretion may from time to time advance or expend moneys to meet expenses for operating or husbanding any of the Vessels, discharge or purchase of liens, taxes, dues, assessments, governmental charges, fines and penalties lawfully imposed and for other matters which the Owner is obligated to pay but fails to pay. Such amounts shall be deducted from the Variable Element of charter hire to the extent already paid by Charterer in the Variable Element or to the extent not properly includible as part of the

Variable Element (for example, without limitation by this reference, claims asserted against any of the Vessels by reason of activities of Owner having no relation to the performance of this Charter). Charterer, though privileged so to do, shall be under no obligation to Owner to make any such advances or expenditures, nor shall the making therof relieve the Owner of any default in that respect. Owner authorizes and empowers Charterer or its appointees, or any of them, to appear in the name of Owner, its successors or assigns, in any court of any country or nation of the world where a suit is pending against any of the Vessels because of or on account of any alleged lien against such Vessel from which such Vessel has not been released and to take such action and institute and pursue such proceedings and do such things as to them or any of them may seem proper towards the defense of such suit and the discharge of such lien. Any expenses incurred by Charterer in appearing in and defending such suit or discharging such lien shall be deducted from the Variable Element of charter hire but only to the extent such lien was not created by a breach by Charterer of any of its obligations under this Charter.

18. *Salvage.* All salvage moneys earned by any of the Vessels shall be paid to Charterer after deducting Master's, Officers', and Crew's share, legal expenses, repairs of damage, if any, and any other extraordinary loss or expense sustained as a result of the salvage service.

19. *Exemptions.* None of the Vessels, nor her Master nor Owner, shall, unless otherwise in this Charter expressly provided, be responsible for any loss or damage arising or resulting from: any act, neglect, default or barratry of Master, Pilots, Mariners or other servants of Owner in the navigation or management of such Vessel; fire, unless caused by the personal design or neglect of Owner; collision, stranding or peril, danger or accident of the sea or other navigable waters; saving or attempting to save life or property; wastage in weight or bulk, or any other loss or damage arising from inherent defect, quality or inherent vice of the cargo; any act or omission of Charterer or shipper, consignee or owner of the cargo, their agents or representatives; insufficiency of packing; insufficiency or inadequacy of marks; explosion, bursting of boilers, breakage of shafts, or any latent defect in hull, equipment or machinery; unseaworthiness of such Vessel unless caused by want of due diligence on the part of Owner to make such Vessel seaworthy or

to have her properly manned, equipped and supplied; or from any other cause of whatsoever kind arising without the actual fault or privity of Owner. And none of the Vessels, nor her Master nor Owner nor Charterer, shall, unless otherwise in this Charter expressly provided, be responsible for any loss, damage, delay or failure in performing hereunder arising or resulting from: act of God; act of War; act of public enemies, pirates or assailing thieves; arrest or restraint of princes, rulers or people, or seizure under legal process provided bond or other security is promptly furnished to release such Vessel or cargo; strike, lockout, stoppage or restraint of labor, picketing, boycotting, or other labor disturbances or interruptions, from whatever cause, either partial or general; or riot or civil commotion. The terms of this Section 19 shall not be construed so as in any way affecting the provisions of Section 3.5, or Section 7 (except as provided in Section 7.5 hereof), or any representations or warranties of Owner made in Section 4.2 hereof or in any Related Instrument.

20. *Pilots; Tugboats; Stevedores.* Owner hereby authorizes Charterer and its agents to bind each of the Vessels and Owner to all the terms and conditions of written or implied contracts or agreements for pilotage, towing or stevedoring in accordance with established local practice in the ports where such services are engaged, but Charterer shall indemnify and hold harmless Owner from the consequences thereof.

21. *Total or Constructive Total Loss.* 21.1. *Completed Vessels.* In the event, after the beginning of the Charter Period, of the actual or constructive total loss (the latter type of loss being determined by the terms of the relevant insurance) of any of the completed Vessels (whether or not delivered hereunder):

(a) payment of the Fixed Element of charter hire payable hereunder in respect of such Vessel shall cease and determine (i) as of the date of such actual total loss or (ii) if the date of such actual total loss is unknown, as of the date such Vessel was last heard from or (iii) in case of a constructive total loss, as of the date such loss is finally agreed to by all the hull and machinery underwriters or determined by a court of competent jurisdiction (any of such applicable dates being hereinafter called the "Loss Date" for such Vessel), and any of such Fixed

Element paid in advance for any part of the Charter Period after such Loss Date shall be deducted by Charterer from the next monthly payment or payments of charter hire or, if not so deducted, Owner shall pay the same promptly to Charterer.

(b) Owner shall be entitled to receive from the insurance proceeds paid in respect of either such loss an amount equal to the sum of (i) the product obtained by multiplying the valuation of such Vessel, set forth in Schedule C hereto, by a fraction, the numerator of which shall be the number of days which shall remain in the Charter Period after the Loss Date and the denominator of which shall be the total number of days in the entire Charter Period (without regard to any extension pursuant to Section 27 hereof) and (ii) the amount by which the Option Price provided for in Section 27 hereof is reduced by the terms of clause (c) of this Section 21.1; and Charterer shall be entitled to receive any remainder of such insurance proceeds; and

(c) the Option Price provided for in Section 27 hereof shall be reduced by an amount equal to the product obtained by multiplying such Option Price (not adjusted pursuant to the terms of Section 27) by a fraction, the numerator of which shall be the valuation set forth in Schedule C hereto for such Vessel and the denominator of which shall be the total valuation of all the Vessels set forth in Schedule C hereto.

21.2. *Incompleted Vessels.* In the event, after the beginning of the Charter Period, of the actual or constructive total loss (the latter type of loss being determined by the relevant insurance or construction or conversion contract) of any Vessel which is being constructed or converted:

(a) payment of the Fixed Element of charter hire payable hereunder in respect of such Vessel shall cease and determine as of the Loss Date (said term being used in this Section 21.2 to mean the date of the said actual total loss or in the case of a constructive total loss, the date of the casualty from which such loss resulted) of such Vessel, and any of such Fixed Element paid in advance for any part of the Charter Period after such Loss Date shall be deducted from the next monthly payment or payments of charter hire or, if not so deducted, Owner shall pay the same promptly to Charterer;

(b) Owner shall be entitled to receive from any insurance proceeds or from the shipyard concerned all amounts, if any, payable with respect to such Vessel; and

(c) the Option Price provided for in Section 27 hereof shall be reduced in the same manner as is provided in Section 21.1(c) hereof in respect of a lost Vessel.

22. *Requisition or Forfeiture.* 22.1. In the event that any of the Vessels (whether or not delivered hereunder) is requisitioned for use by any governmental authority on a time or voyage or bareboat charter basis, or on any other basis not involving a requisition of title to, or seizure of the title to, or forfeiture of the title to, such Vessel:

(a) payment of the Fixed Element and the Variable Element (if any) of charter hire payable in respect of such Vessel shall cease and determine for any period of such requisition for use, and any of such Fixed Element or Variable Element paid in advance for any part of the Charter Period after such requisition for use commences shall be deducted by Charterer from the next monthly payment or payments of charter hire or, if not so deducted, Owner shall pay the same promptly to Charterer; and

(b) the duration of such requisition for use shall be counted as part of the Charter Period, and such Vessel shall be made available to Charterer during the Charter Period as soon as possible after such requisition for use has ended; but if such requisition for use is still in effect at the end of the Charter Period, such Vessel shall be considered as no longer covered by this Charter, and the Option Price provided for in Section 27 hereof shall be reduced in the same manner as is provided for in Section 21.1(c) hereof in respect of a lost Vessel;

provided, however, that if such requisition for use ends after the end of the Charter Period and within 60 days thereafter, Charterer may, if it so desires, by written notice to Owner, accept such Vessel hereunder and, thereupon, all the terms (including, without limitation, Section 27 hereof) of this Charter shall apply to such Vessel as of the date of such acceptance, and the said Option Price shall be readjusted accordingly.

22.2. In the event of a governmental requisition of title to, or a governmental seizure of title to, or a forfeiture of title to, any of the Vessels (whether or not delivered hereunder):

(a) such Vessel shall cease to be covered by this Charter and payment of the Fixed Element and the Variable Element (if any) payable hereunder in respect of such Vessel shall cease and determine as of the date any such event becomes effective (except that in case of a forfeiture, such charter hire shall cease 15 days after a seizure for forfeiture by court process unless such Vessel is released from such seizure on or before such 15th day) and any of such Fixed Element or Variable Element paid in advance for any part of the Charter Period after such requisition, seizure (unless so released) or forfeiture shall be deducted by Charterer from the next monthly payment or payments of charter hire, or if not so deducted, Owner shall pay the same promptly to Charterer; and

(b) the Option Price provided for in Section 27 hereof shall be reduced in the same manner as is provided for in Section 21.1(c) hereof in respect of a lost Vessel;

provided, however, that if such requisition, seizure or forfeiture action is abandoned or ceases after the end of the Charter Period and within 60 days thereafter, Charterer may, if it so desires, by written notice to Owner, accept such Vessel hereunder and, thereupon, all the terms (including, without limitation, Section 27 hereof) of this Charter shall apply to such Vessel as of the date of such acceptance, and the said Option Price shall be readjusted accordingly, and provided, further, that if such requisition, seizure or forfeiture of the Vessel is reversed, and the Vessel is returned to Owner within 90 days after such event, the same shall be deemed to have been a requisition for use and the terms of Section 22.1 hereof shall apply in respect of such Vessel.

22.3. Charterer agrees that any amounts paid by any governmental authority in respect of any event referred to in this Section 22 shall belong wholly to Owner.

22.4. The provisions of this Section 22 shall not relieve Charterer of the payment of any Variable Element of charter hire arising in

respect of a Vessel prior to the happening of any event referred to in this Section 22, or any obligation or indemnity expressly undertaken by Charterer in this Charter.

23. *Court Process.* If a suit shall be filed against any of the Vessels, or if any of the Vessels shall be levied upon or taken into custody or detained by virtue of any proceeding in any court or tribunal or by any government or other authority or otherwise, Owner will promptly, but not less than 15 days thereafter, cause such Vessel to be released and any lien asserted thereon in connection with such suit or other action to be discharged.

24. *Assignment; Subcharters.* Neither party shall have the right to assign this Charter or any of the moneys due hereunder without the written consent of the other, except that Owner shall have the right to assign all or any part of the Fixed Element of charter hire, and that Charterer shall have the right to assign this Charter to any citizen of the United States within the meaning of Section 2 of the Shipping Act, 1916, as amended, provided, in the case of an assignment by Charterer, that the assignee shall expressly undertake in writing to be, and Charterer shall also remain, liable for the payment of charter hire and other amounts and for the performance of all other obligations of Charterer hereunder. Charterer shall have the right to subcharter any one or more of the Vessels to any citizen of the United States within the meaning of Section 2 of the Shipping Act, 1916, as amended, on a time or voyage charter basis, but no such subcharter shall relieve Charterer of its obligations hereunder. If Owner desires to assign this Charter in its entirety to a wholly-owned subsidiary of Owner or an affiliate of Owner, Charterer shall not unreasonably withhold its consent thereto.

25. *Default by Charterer.* In the event that (a) Charterer shall default in the payment of any charter hire due hereunder for more than 15 days after written notice thereof is given to Charterer by Owner, or (b) Charterer shall default in the performance or compliance with any of the other provisions of this Charter to be performed or complied with by it for more than 30 days after written notice of such default is given by Owner to Charterer, or (c) Charterer shall became insolvent or bankrupt or make an assignment for the benefit of creditors or consent to the appointment of a trustee or receiver, or (d)

a trustee or a receiver shall be appointed for Charterer or for a substantial part of its property without its consent and shall not be dismissed for a period of 30 days, or (e) bankruptcy, reorganization or insolvency proceedings shall be instituted by or against Charterer, and if instituted against Charterer shall not be dismissed for a period of 30 days, Owner may, at its option, withdraw all, or from time to time during the continuance of such default or event, any lesser number of, Vessels from the service of Charterer upon giving notice to Charterer; provided, however, that if any claimed default of Charterer, other than a default referred to in clause (a) of this Section 25, is subject to arbitration pursuant to Section 33 hereof, no Vessels may be withdrawn from the service of Charterer until an arbitration has been held and Charterer has failed to comply with the arbitration award within 15 days after the date thereof, and provided, further, that if any claimed default is not subject to arbitration pursuant to Section 33 hereof, no Vessel may be so withdrawn until a final court decision, after all appeals, has been made against Charterer and Charterer has not complied with such decision within 15 days thereafter. Charterer agrees that, in the case of the second proviso of the immediately preceding sentence, interest at the rate provided below in this Section 25 shall be payable from the date of such default. Except as provided above in Section 25, the terms of this Section 25 are without prejudice to any right or remedy at law, in equity or admiralty available to Owner. Charterer shall pay interest to Owner on any overdue charter hire at the rate of 1% per annum over the minimum commercial lending rate of First National City Bank (New York) for the relevant period of time.

26. *Lay-Up of Vessel.* Charterer shall have the right, upon written notice to Owner, to lay-up any of the Vessels for all or any portion of the Charter Period, in which case Charterer will continue to perform and comply with all of the provisions of this Charter to be performed or complied with by it, including, without limitation, the making of all payments required of it by this Charter, without reduction, interruption or abatement, except that during the period of such lay-up there shall be credited against the Variable Element charter hire due, to the extent not reflected in the computation of such charter hire, all savings effected by Owner by reason of such Vessel being placed in such laid-up status. Such right may be exercised by Charterer one or more times during the Charter Period. Should Charterer, having exercised such

right, desire such Vessel again to be put into service under this Charter, Owner will, upon receipt of written notice from Charterer to such effect, immediately take steps to restore such Vessel to service as promptly as possible. During the period of any such lay-up Owner will, consistent with good operating practices, take all appropriate steps to reduce the expenses constituting Variable Element charter hire. Owner shall not be required to accept redelivery of any Vessel in lay-up status, and if Charterer shall not serve timely notice exercising the purchase option granted by Section 27 hereof, Owner may at its option restore any laid-up Vessel to active condition prior to the termination of the Charter Period or at any time thereafter, and recover the expense thereof from Charterer as the Variable Element or otherwise, as the case may be.

27. *Purchase Option.* Charterer is hereby granted an irrevocable option to purchase, at the end of the Charter Period, all of the Vessels then covered by this Charter on not less than 90 days' prior written notice to Owner for a total price of $25,000,000 (herein called the "Option Price"); said amount, however, shall be adjusted as provided below:

(i) There shall be credited against the Option Price all Fixed Element charter hire paid in respect of any of the Vessels for any period of the Charter Period prior to such Vessel's delivery hereunder except that no credit shall be allowed for any Fixed Element charter hire paid in respect of any period of delay in delivery caused by changes or modifications required by Charterer pursuant to the terms of Section 2 hereof, nor in respect of any period of delay in delivery caused by Owner's compliance with requests or directions of Charterer made pursuant to Section 3.4 to the extent (i) the determination by Charterer referred to in the first sentence thereof shall have been incorrect or (ii) the actions requested or directed by Charterer shall be found to have been unjustified in the event challenged by the relevant shipyard as a cause of delay for which such shipyard is not responsible (said Fixed Element hire so paid, but not including that excepted in this clause 1, is herein called "Prepaid Hire"); and

(ii) There shall be deducted from the Option Price all reductions made pursuant to Sections 3.1, 3.3. 21.1(c), 21.2(c), 22.1(b) or 22.2(b) hereof.

If the aggregate of the credits against and the deductions from the Option Price pursuant to clauses (i) and (ii) of this Section 27 exceeds the amount of the Option Price and if Charterer exercises the option granted by this Section 27, Owner shall promptly pay to Charterer an amount equal to such excess and Charterer shall owe nothing for the option granted by this Section 27.

If Charterer exercises the option granted by this Section 27, Charterer shall pay the Option Price, if any, by official bank or certified check in New York Clearing House funds, adjusted as provided above in this Section 27, to Owner on the last day of the Charter Period, or on the first business day thereafter if said last day is not a business day, in exchange for a Bill of Sale or Bills of Sale covering the Vessels so sold, in recordable form, which will warrant title and freedom from all liens and encumbrances of whatsoever nature (except liens arising in the ordinary course of business, the cost of the discharge of which has not theretofore been paid to Owner as part of the Variable Element, liens adequately covered by insurance -- after giving effect to any applicable deductibles or franchises — and except any encumbrances imposed by Section 802 or 902 of the Merchant Marine Act, 1936, as amended, or by any relevant Construction-Differential Subsidy Contract or contract by which Owner acquired title to the Vessel concerned from the United States of America). Prior to or simultaneously with receipt of such Bill of Sale or Bills of Sale, Charterer will execute and deliver any required agreement with the United States of America by which it will agree to be bound by any statutory or contractual encumbrances of the nature described in the parenthetical clause of the last preceding sentence of this Section 27. All applicable sales, use, transfer, stamp or similar taxes in connection with the delivery of title to or possession of such Vessels shall be for Owner's account (but neither party hereto shall be liable for any commission in this connection to any person incurred by the other party). Each of said Vessels will be delivered in her then "as is" condition but with all of the boilers, engines, machinery, masts, spars, sails, rigging, boats, anchors, chains, tackle, apparel, furniture, fittings, and spare parts and all other appurtenances then appertaining or belonging to each of said Vessels, whether on

board or not (excepting only leased equipment which under the terms of any lease thereof has not or does not become the property of Owner; which leased equipment Charterer shall promptly deliver to Owner or shall assume the obligations of Owner under the applicable lease). Risk of any event enumerated in Sections 21 or 22 hereof in respect of said Vessels shall be on Charterer on and after tender of title thereto by Owner. Possession will be immediately given to Charterer of each of said Vessels which is in a continental United States port at the time of the sale provided for herein, and possession of each of the said Vessels outside the continental United States at said time shall be delivered to Charterer as soon as such Vessel reaches a continental United States port. The Variable Element of charter hire shall be paid in respect of each of said Vessels until the time of the delivery of possession of such Vessel to Charterer. Moreover, at any time after the termination of the Charter Period, Charterer shall promptly on demand of Owner pay to Owner the amount of all items of expense attributable to the operation or husbanding of the Vessels during the Charter Period which would have been properly payable to Owner as part of the Variable Element of charter hire were the amount thereof known during the Charter Period.

If Charterer does not exercise the option granted by this Section 27, Owner, at its option, shall either (i) pay to Charterer, at the end of the Charter Period, all of the Prepaid Hire by official bank or certified check in New York Clearing House funds (in which case Charterer shall continue to pay both the Fixed Element and the Variable Element of charter hire with respect to any Vessel not redelivered to Owner hereunder at the end of the Charter Period until redelivery of such Vessel is accomplished) or (ii) give the use of all the remaining Vessels to Charterer, free of payment of the Fixed Element of the charter hire for each such Vessel, for a period extending from the end of the original Charter Period until the aggregate of the Fixed Element of the charter hire for all of such Vessels, which otherwise would have been payable for such period, equals the amount of the Prepaid Hire. During such extended period all terms of this Charter shall apply except Sections inconsistent with the use given under this clause (ii) including, without limitation, Section 7.1 hereof. During any such use period, (i) Owner shall be entitled to receive all insurance proceeds payable with respect to the actual or constructive total loss of any of such Vessels and (ii) Charterer shall consent to the deletion of its name from the loss

payee clause of all hull and machinery insurance in respect of any such loss; provided however, that (a) such insurance carried at Charterer's expense as part of the Variable Element shall not exceed, as to any of such Vessels, the amount by which the Option Price would have been reduced in case of a loss pursuant to the terms of Section 21.1(c) hereof and (b) underwriters shall have no right of subrogation against Charterer in respect of any such loss. If any of such Vessels is performing a voyage at the time said use period has been completed, such Vessel shall continue performing under this Charter in accordance with the terms of this paragraph until such voyage is completed and the Variable Element and an additional charter hire at a reasonable daily rate shall be payable in respect of such Vessel.

28. *Bankruptcy of Owner.* In the event that (i) Owner shall become insolvent or bankrupt or make an assignment for the benefit of creditors or consent to the appointment of a trustee or receiver or (ii) a trustee or a receiver shall be appointed for Owner or for a substantial part of its property without its consent and shall not be dismissed for a period of 30 days or (iii) bankruptcy, reorganization or insolvency proceedings shall be instituted by or against Owner and, if instituted against Owner, shall not be dismissed for a period of 30 days:

Charterer shall have an irrevocable option to purchase all of the Vessels covered by this Charter at the time of the exercise of said option, upon written notice to Owner, on a date set for such purchase by Charterer in such written notice. The purchase price for each of such Vessels shall be equal to the amount which would have been payable to Owner upon the loss thereof assuming such loss occurred on the aforesaid date set for purchase, computed as provided in Section 21.1(b) hereof, less the amount due in respect of any mortgage or mortgages or any other lien not for the account of Charterer on such Vessel and less the amount of Prepaid Hire. Delivery of title to each of the Vessels shall take place on the date set for such purchase in accordance with the provisions of Section 27 hereof in respect of the exercise of the option there provided for and delivery of possession of each of the Vessels shall be made in accordance with the relevant terms of said Section 27.

29. *Notices.* All notices and other communications under this Charter shall be in writing and shall be considered effective only upon receipt thereof, (a) if to Owner, at One Broadway, New York, N. Y. 10004, attention of the Secretary, or at such other address as Owner from time to time may have designated by notice to Charterer, or (b) if to Charterer, at P. O. Box 1050, Elizabeth, New Jersey 07207, attention of the Secretary, or at such other address as Charterer from time to time may have designated by notice to Owner.

30. *Law Governing.* The interpretation of this Charter shall be construed in accordance with the laws of the United States of America, including the general maritime law as enforced in United States courts when applicable, and otherwise by the laws of the State of New York.

31. *Miscellaneous.* Neither this Charter nor any provision hereof may be changed, waived, discharged or terminated orally but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. The captions in this Charter are for convenience of reference only and shall not define or limit the provisions hereof. This Charter may be executed in several counterparts, each of which is an original, but all of which together shall constitute one instrument. All amounts expressed herein in terms of Dollars shall mean Dollars in any coin or currency of the United States of America which at the time payment is due shall be legal tender for the payment of public and private debts.

32. *Limitation of Liability Statute.* Any provision of this Charter to the contrary notwithstanding, Owner shall have the benefit of all limitations of, and exemptions from, liability accorded to an owner or a chartered owner of vessels by any statute or rule of law for the time being in force; provided, however, that Owner shall not have the benefit of any such limitation or exemption against Charterer in respect of any direct liability to Charterer arising out of a breach by Owner of this Charter.

33. *Arbitration; Waiver.* 33.1. Subject to the provisions of the next paragraph of this Section 33, any dispute or difference of opinion arising between the parties hereto, or the failure of the parties hereto to agree, as to certain matters arising out of this Charter as provided in said next paragraph, shall be referred to arbitration in New York, N. Y.

The party requesting arbitration shall serve upon the other party a written demand for arbitration with the name and address of the arbitrator appointed by it, and such other party shall within 20 days thereafter appoint an arbitrator, and the two arbitrators shall appoint a third, and the decision or award of any two shall be final and binding upon the parties. In the event that the two arbitrators fail to appoint a third arbitrator within 20 days of the appointment of the second arbitrator, either arbitrator, or party hereto, may apply to a judge of the United States District Court for the Southern District of New York for the appointment of the third arbitrator, and the appointment of such arbitrator by such judge on such application shall have precisely the same force and effect as if such arbitrator had been appointed by the two arbitrators. Should the party upon whom the demand for arbitration is served fail or refuse to appoint an arbitrator within 20 days, the single arbitrator shall have the right to decide alone, and his decision or award shall be final and binding upon the parties. Any arbitration proceeding pursuant to this Section 33 shall be conducted in accordance with the rules of the American Arbitration Association, but each party will bear its own legal fees, costs and expenses including, without limitation, the cost of its expert witnesses.

This Section 33 on Arbitration shall not apply except only for an arbitration limited to matters arising under Sections 2, 3.1, 3.2, 3.3, 3.6, 5.1, 5.2, 5.3, 5.4, 7.2, 9 (except the last sentence thereof), 10, 13, 26 and the last sentence of Section 27 hereof, with such arbitration being limited to such matter arising under any of said Sections and not in any way altering or otherwise affecting any other provision of this Charter or any matter arising under any such other provision.

33.2. Each party hereto hereby waives the right to demand a jury trial in any litigation between such parties arising out of this Charter.

34. *Indemnification.* Charterer shall indemnify and hold harmless Owner against any claims or liabilities of whatsoever nature, including without limitation, penalties arising from violation of the laws of any country or political unit thereof, whether such claims, liabilities or penalties are founded or unfounded provided, that they or any of them (i) shall arise during the Charter Period out of the performance hereof by Owner, (ii) shall not result from the gross negligence or wilful misconduct of Owner, (iii) shall not include tax liabilities excluded

by Section 7.2 hereof and (iv) shall not include items of the Variable Element of charter hire already paid by Charterer.

35. *Public Law 90-586.* Pursuant to the terms of new paragraph 6 added by Public Law 90-586 to Section 116, Chapter 10, of the Bankruptcy Act (11 U.S.C. 516), the terms of this Charter shall not be affected by the provisions of said Chapter 10.

IN WITNESS WHEREOF, the parties have caused this Charter to be executed and delivered by their respective officers thereunto duly authorized as of the date first above written.

UNITED STATES LINES, INC.
Owner

By JOHN J. McMULLEN
President

[CORPORATE SEAL]

Attest:

ANITA C. TOMAN
Assistant Secretary

SEA-LAND SERVICE, INC.
Charterer

By M. P. McLEAN
Chairman of Corporation

[CORPORATE SEAL]

Attest:

JOHN W. McCONNELL, JR.
Secretary

STATE OF NEW JERSEY
COUNTY OF UNION } ss.:

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared JOHN J. McMULLEN, President, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of United States Lines, Inc., a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE. This 27th day of October, A. D. 1969.

EDITH BUGGE
Notary Public in and for
Union County, New Jersey

[NOTARIAL SEAL]

EDITH BUGGE
Notary Public of New Jersey
My Commission Expires March 3, 1974

STATE OF NEW JERSEY
COUNTY OF UNION } ss.:

BEFORE ME, the undersigned, a Notary Public in and for said County and State, on this day personally appeared MALCOM P. McLEAN, Chairman of Corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that the same was the act of Sea-Land Service, Inc., a corporation, and that he executed the same as the act of such corporation for the purposes and consideration therein expressed, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, This 27th day of October, A. D. 1969.

EDITH BUGGE
Notary Public in and for
Union County, New Jersey

[NOTARIAL SEAL]

EDITH BUGGE
Notary Public of New Jersey
My Commission Expires March 3, 1974

SCHEDULE A-1

VESSELS BUILT

Name	Official Number
American Lancer	514261
American Legion	515155
American Liberty	516464
American Lynx	517450
American Lark	518444
American Astronaut	520694

VESSELS NOW BUILDING

Type	Contract Numbers	Scheduled Delivery Date
Lancer	Marad 251, Sun 654	July 30, 1970
Lancer	Marad 252, Sun 655	September 28, 1970

VESSELS NOW BEING CONVERTED

Name	Official Number	Scheduled Delivery Date
Pioneer Main	266181	June 12, 1970
Pioneer Moor	265143	June 12, 1970
Pioneer Mill	266832	June 21, 1970
Pioneer Minx	266256	June 12, 1970
Pioneer Mist	267444	August 11, 1970
Pioneer Mart	267275	August 11, 1970
Pioneer Ming	268243	August 20, 1970
Pioneer Myth	267033	August 20, 1970

SCHEDULE A-2

RELATED INSTRUMENTS

1. Agreement dated as of October 27, 1969 among Owner, Walter Kidde & Company, Inc. (hereinafter called "Kidde"), Charterer, and R. J. Reynolds Tobacco Company (hereinafter called "Reynolds").

2. Agreement of Lease and Sublease dated as of October 27, 1969 between Owner and Charterer.

3. Guaranty of Performance by Kidde dated as of October 27, 1969.

4. Guaranty of Performance by Reynolds dated as of October 27, 1969.

SCHEDULE B

MORTGAGES PRESENTLY AFFECTING VESSELS

1. First Preferred Mortgage dated May 14, 1956 by and between United States Lines Company and the United States of America covering the SS COTTON MARINER (renamed SS PIONEER MAIN), Official No. 266181, in the original principal amount of $3,580,795, as amended by Amendment and Supplemental Indenture dated December 29, 1960.

2. First Preferred Mortgage dated May 14, 1956 by and between United States Lines Company and the United States of America covering the SS GOPHER MARINER (renamed SS PIONEER MINX), Official No. 266256, in the original principal amount of $3,585,895, as amended by Amendment and Supplemental Indenture dated December 29, 1960.

3. First Preferred Mortgage dated May 14, 1956 by and between United States Lines Company and the United States of America covering the SS SHOW ME MARINER (renamed SS PIONEER MILL), Official No. 266832, in the original principal amount of $3,660,714, as amended by Amendment and Supplemental Indenture dated December 29, 1960.

4. First Preferred Mortgage dated May 15, 1956 by and between United States Lines Company and the United States of America covering the SS PENINSULA MARINER (renamed SS PIONEER MIST), Official No. 267444, in the original principal amount of $3,717,396, as amended by Amendment and Supplemental Indenture dated December 29, 1960.

5. First Preferred Mortgage dated May 17, 1956 by and between United States Lines Company and the United States of America covering the SS MOUNTAIN MARINER (renamed SS PIONEER MOOR), Official No. 265143, in the original principal amount of $3,491,817, as amended by Amendment and Supplemental Indenture dated December 29, 1960.

6. First Preferred Mortgage dated May 18, 1956 by and between United States Lines Company and the United States of America covering the SS SUNFLOWER MARINER (renamed SS PIONEER MART), Official No. 267275, in the original principal amount of $3,708,882, as amended by Amendment and Supplemental Indenture dated December 29, 1960.

7. First Preferred Mortgage dated May 21, 1956 by and between United States Lines Company and the United States of America covering the SS PELICAN MARINER (renamed SS PIONEER MYTH), Official No. 267033, in the original principal amount of $3,678,282, as amended by Amendment and Supplemental Indenture dated December 29, 1960.

8. First Preferred Mortgage dated November 21, 1956 by and between United States Lines Company and the United States of America covering the SS SILVER MARINER (renamed SS PIONEER MING), Official No. 268243, in the original principal amount of $4,725,864, as amended by Amendment and Supplemental Indenture dated December 29, 1960.

Each of the above First Preferred Mortgages, amended as set forth above, was assigned to and assumed by Owner by Assumption Agreement and Supplemental Indenture to Mortgage dated January 3, 1967 among the United States of America, United States Lines Company and Owner and recorded in the office of the Collector of Customs at New York, New York, on January 3, 1967 at 3:30 P.M. in Book PM 220. Said Assumption Agreement and Supplemental Indenture to Mortgage contains information as to the place and time of recording of each First Preferred Mortgage and Amendment and Supplemental Indenture thereto referred to in items 1 through 8 above.

Each of said Mortgages, as so assigned and assumed, was further amended, each by a separate Amendment and Supplemental Indenture dated as of July 30, 1969 between Owner and the United States of America, to reflect the reduced total amount of each such Mortgage and to exclude containers carried on such Vessels from the liens of each respective Mortgage.

SCHEDULE C

Vessels	Monthly Fixed Element	Valuation
American Lancer	$132,492.75	$ 17,263,658
American Legion	132,492.75	17,263,658
American Liberty	132,492.75	17,263,658
American Lynx	132,492.75	17,263,658
American Lark	132,492.75	17,263,658
American Astronaut	132,492.75	17,263,658
Lancer Type Contract Nos. Marad 251, Sun 654	132,492.75	17,263,658
Lancer Type Contract Nos. Marad 252, Sun 655	132,492.75	17,263,658
Pioneer Main	97,278.90	12,292,342
Pioneer Moor	97,278.90	12,292,342
Pioneer Mill	97,278.90	12,292,342
Pioneer Minx	97,278.90	12,292,342
Pioneer Mist	97,278.90	12,292,342
Pioneer Mart	97,278.90	12,292,342
Pioneer Ming	97,278.90	12,292,342
Pioneer Myth	97,278.90	12,292,342
	(Total)	$236,448,000

ESTIMATED EXPENSE FORM
(Variable Element Charter Hire)

Period Ending

	Vessel Name	Vessel Name	Vessel Name	Vessel Name	Vessel Name	Vessel Name	Total
Manning*							
Equipping							
Supplying							
Stores							
Subsistence							
Maintaining & Repairing							
Insurance:							
Hull and Machinery							
Protection & Indemnity							
War Risk Insurance							
Structural Changes							
Taxes, Dues & Assessments							
Miscellaneous							
TOTAL							

* Manning shall be broken down as follows:
- Wages — S T
- Wages — O T
- Taxes
- Fringe benefits
  - Vacation
  - Pension
  - Welfare
  - Training

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SCHEDULE E

BILL OF LADING CLAUSES

Definitions . . . . . **The word "Goods" shall include wares, merchandise and articles of every kind including containers, vans, trailers, palletized units and other packages; the word "Package" as used herein and in the United States Carriage of Goods by Sea Act, shall include containers, vans, trailers, palletized units and all pieces, articles and things of any description except goods shipped in bulk.**

Carrier's Servants, Agents, Stevedores, Contractors, etc. Because the Carrier requires persons and companies to assist it in the performance of all work and services undertaken by it in connection with the cargo described herein as well as the cargo of others transported or to be transported by the Carrier, it is expressly agreed between the parties hereto that the Master, officers, crew members, contractors, stevedores, longshoremen, agents, representatives, employees and others used, engaged or employed by the Carrier in the performance of the aforesaid work and services of the Carrier, shall each be a beneficiary of this contract and shall be entitled to all exemptions and immunities from and limitations of liability which the Carrier has under this bill of lading, whether written, printed or stamped hereon or incorporated by reference herein, and under the United States Carriage of Goods by Sea Act, 1936, and in entering into the provisions of this Clause, the Carrier, to the extent of such provisions, does so not only on its own behalf but also as agent and trustee of each of the persons and companies described above, all of whom shall be deemed parties to the contract in or evidenced by this bill of lading.

Stowage on Deck. Goods stowed in poop, forecastle, deckhouse, shelter deck, passenger spaces, storeroom, or any other covered in space shall be deemed to be stowed under deck for all purposes, including general average. Goods, whether or not shipped in containers, vans or trailers, may be carried on deck at Carrier's option without notice to the shipper or consignee and, if carried on deck, Carrier shall not be required to specially note, mark or stamp any statement of on deck carriage on this bill of lading, any custom to the contrary notwithstanding.

Lighterage. At ports and places of discharge where by local law, local authorities or local custom Carrier is required to discharge cargo

to lighters or other craft or where it has been so agreed, or where piers or wharves are not available which Ship can reach, lie at or depart from always afloat, or where prevailing conditions at the time render discharge to a pier or wharf dangerous or imprudent or would subject Ship, Goods and cargo of others to abnormal delay, consignee shall be required to furnish lighters or other craft and take delivery along side Ship in such lighters or craft from Ship's tackle at the risk and expense of Goods. In such cases, if consignee fails or refuses to provide lighters or other craft, Carrier, acting as agent for consignee, may engage such lighters or craft for the risk and account of Goods, and upon discharge of Goods into such lighters or craft, performance hereunder and delivery of Goods shall be complete and Carrier shall not be under any further responsibility with respect to Goods.

Package Limitation. If the actual value of any Package, piece or customary freight unit of cargo when not shipped as piece or package, exceeds $500, the actual value shall be declared by shipper in writing before shipment and inserted in this bill of lading and extra freight paid thereon if required; if that is not done the value of such Goods shall be deemed to be $500, per Package, piece or customary freight unit but in no event shall Carrier's liability exceed the market value at port of discharge. Any partial loss or damage shall be computed pro rata on the basis of the applicable value.

Clause Paramount. This bill of lading shall have effect subject to the provisions of the Carriage of Goods by Sea Act of the United States, 1936, or similar Act in force in the locality where issued. All the provisions of such Act shall apply throughout the entire time that Goods are in Carrier's custody including periods of Carrier's custody before loading on and after discharge from Ship whether Carrier be acting as such or as bailee during such periods. This bill of lading is also subject to and incorporates the provisions of Sections 4281-4286, 4289 of the U.S. Revised Statutes and amendments thereto.

Both To Blame Collisions. If the ship comes into collision with another vessel as a result of the negligence of the vessel and any act, neglect or default of the master, mariner, pilot or of the servants of the carrier in the navigation or in the management of the ship, the

owners of the goods carried hereunder will indemnify the carrier, the vessel and her owner against all loss or liability to the other or non-carrying vessel or her owners insofar as such loss or liability represents loss of, or damages to, or any claim whatsoever, of the owners of said goods, paid or payable by the other or non-carrying vessel or her owners to the owners of said goods and set-off, recouped or recovered by the other or non-carrying vessel or her owners as part of their claim against the carrying ship or carrier. The foregoing provisions shall also apply where the owners, operators or those in charge of any vessel or vessels or objects other than, or in addition to, the colliding vessels or objects are at fault in respect of a collision, contact, stranding or other accident.

General Average. General Average shall be adjusted, stated and settled according to York-Antwerp Rules 1950 at the Port of New York or last port of discharge, at carrier's option, and as to matters not provided for in these Rules, according to the laws and usages at the Port of New York or any other place at the option of the carrier. Average agreement and bond, together with such additional security as may be required by the carrier (including cash deposit in U. S. funds, if required) shall be furnished before delivery of the goods.

In the event of accident, danger, damage or disaster, before or after commencement of the voyage resulting from any cause whatsoever, whether due to negligence or not, for which or for the consequence of which, the carrier is not responsible, by statute, contract or otherwise, the goods, shippers, consignees or owners of the goods shall contribute with the carrier, the vessel and/or her owners in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred, and shall pay salvage and special charges incurred in respect of the goods. If a salving ship is owned, chartered or operated by the carrier, or the vessel owner, salvage shall be paid for as fully and in the same manner as if such salving ship or ships belong to strangers.

Fire. Without waiver or limitation of any exemption from or limitation of liability afforded by law or by this bill of lading, neither the carrier, the ship nor her owner nor any corporation owned by, subsidiary to, or associated or affiliated with the carrier shall be

liable for any loss or damage wheresoever and whensoever occurring by reason of any fire whatsoever, including that occurring before loading on or after discharge from the ship, unless such fire shall have been caused by the design or neglect or by the actual fault or privity of the carrier or of such corporation respectively. In any situation where such exemption from liability may not be permitted by law neither the carrier nor such corporation shall be liable for any loss or damage by fire unless caused by negligence, including that imputed by law, for which the carrier or such corporation is liable, respectively.

Schedule E

SCHEDULE A* TO AGREEMENT OF LEASE AND SUBLEASE

OWNED EQUIPMENT

Owner	20' Containers	Containers 40'x8'x8'	Containers 40'x8'x8 6"	Reefer Containers	Open Containers 40'x8'x8'6"	Open Containers 40'x8'x4'3"	Tanks	USLU Identification Numbers** From	To	Original Cost	Depreciated Value as of 12/31/70
United States Lines, Inc	1800							200.001	201.800	$ 13,878,513.91	$ 1,941,139.90
	903							202.035	203.550	1,511,953.00	1,278,978.21
	800							208.001	208.800	1,061,247.75	776,618.80
	150							201.001	201.150	113,752.60	117,361.79
		725						801.001	801.725	2,132,663.66	1,640,322.93
		560						801.176	801.385	1,615,315.60	1,473,311.72
		25						889.001	889.025	93,801.25	65,708.95
			950					810.001	810.950	2,831,247.00	2,136,910.19
				1				420.001		8,625.63	6,498.79
				145			♦	630.476	630.620	1,067,763.75	601,228.09
					65			451.101	451.165	239,852.60	199,826.93
						45		109.001	109.045	136,726.09	111,234.81
							100	890.001	890.100	1,074,132.00	916,868.53
			2472					414.100	416.171	7,859,500.00	6,668,591.32
Subtotals***	3253	1301	3422	146	65	45	100			$22,982,362.93	$18,678,784.39
Miscellaneous Equipment****										1,801,691.64	1,133,873.98
Totals										$24,784,221.57	$19,811,659.37

* The following is a list of certain types of equipment owned or to be acquired by United States Lines, Inc.

** Each USLU number is complicated by the addition of a 7th check digit to facilitate the use of the Company's computer system.

*** The USLU identification numbers of destroyed equipment are listed in Annex I to this Schedule A. Destroyed equipment has been deducted from the original cost and depreciated values listed above.

**** Miscellaneous equipment is listed in Annex II to this Schedule A.

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ANNEX I to Schedule A

USLU IDENTIFICATION NUMBERS OF EQUIPMENT LISTED ON SCHEDULE A WHICH HAS BEEN DESTROYED

200-181
200-480
200-729
200-805
200-810
201-303
201-551
201-676
202-766
202-843
203-001
203-364
208-252
400-092
400-106
400-134
400-159
400-522
400-604
400-625
409-003
410-259
440-012
440-025

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ANNEX II* TO SCHEDULE A

MISCELLANEOUS CONTAINER AND CHASSIS EQUIPMENT

Owner	Description	Original Cost	Depreciated Value as of 12/31/70
United States Lines, Inc.	145 Carrier heating and cooling units	$ 356,555 00	$ 302,170 19
	Additional cost of containers and chassis, not allocated to individual units of equipment		
	Decals and signs	$ 132,206 39	$ 100,416 21
	Spud legs — added to chassis to prevent tip-over	6,601 68	4,780 91
	Actuspup-system for securing shelving and straps within containers	12,313 52	8,955 15
	Bull rings	10,802 50	7,861 89
	Guides for caterpillar dock boards	448 50	351 32
	Bayonets and collars — chassis modifications	13,482 32	11,049 03
	Lighting modifications — 40 foot chassis	26,598 82	22,569 47
	Open top tie-downs	711 64	692 15
		$ 203,165 47	$ 156,526 13
	Other refrigeration equipment and modifications		
	Batteries for power packs	$ 11,156 71	$ 8,949 51
	Mounting brackets	23,883 26	18,481 44
	50-amp conversion-containers	13,342 11	10,971 02
	50-amp conversion power packs	8,982 90	7,391 66
	Allis-Chalmers diesel generator sets and related equipment	10,880 00	9,084 94
	Dial thermometers for reefer containers	3,200 00	2,577 78
		$ 71,444 98	$ 57,462 15
	Other container and cargo handling equipment		
	Spreaders	$ 184,811 69	$ 130,909 28
	Spreader cables	1,214 35	883 83
	Dollies	15,350 00	10,783 44
	Couplers and spacers	4,961 53	3,650 62
	Tractors and other container-type equipment	744,318 47	278,164 77
	Spreader pipes and related gear	3,202 18	2,524 08
	Lazyadins for open top containers	18,617 39	15,591 13
	Maintenance equipment	2,593 82	2,186 87
	Portable radio equipment	2,738 13	2,171 78
		$ 977,647 98	$ 448,869 10
	Container and chassis spare parts	192,818 21	192,818 21
		$1,801,061 64	$1,155,875 98

* Note that the above schedule does not include certain heating and cooling units purchased as part of overall cost of refrigerated containers. Cost and depreciated value of such units are included with cost of the related containers.

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SCHEDULE B* TO AGREEMENT OF LEASE AND SUBLEASE

LEASED EQUIPMENT

Agreement, Vendor, or Lessor	Date	20' Chassis	24' Chassis	40' Chassis	Bogies	Adapter Frames	Gen. Sets	20' Containers	Containers 40'x8'x8'	Containers 40'x8'x8'6"	Reefer Containers	Open Top Containers 40'x8'x8'6"	USLG Identification Numbers** From	To	Original Cost	Depreciated Value as of 12/31/70
[illegible]	[illegible]															
[illegible]	[illegible]															
[illegible]	[illegible]															

Agreement, Vendor, or Lessor	Date	20' Chassis	24' Chassis	40' Chassis	Bogies	Adapter Frames	Gen Sets	20' Containers	Containers 40'x8'x9'	Containers 40'x8'x9'6"	Reefer Containers	Open Top Containers 40'x8'x9'6"	USLI Identification Numbers** From	To	Original Cost	Depreciated Value as at 82/01/'30
USL Leasing Corporation		50											940 001	940 050	$	$
		15											910 001	910 015		
		115											910 116	910 245		
				200									940 001	940 200		
				475									940 276	940 750		
				50									944 701	944 750		
				50									945 001	945 050		
				60									945 051	945 090		
				200									945 091	945 290		
				601									945 291	945 901		
					40								945 001	945 020		
United States Lines Operations, Inc		50				50							940 001	940 050		
		70											920 001	920 070		
			116										930 001	930 020		
				20									940 001	940 116		
				1									950 001	950 029		
				60									950 030			
				1									950 031	950 090		
				50									952 001			
				10									953 001	953 050		
Walter Kobbe Leasing of Maine Inc		50					50						950 001	950 100		
Carrier Corporation Purchase Order #939	2 10 00												992 101	992 210		
							200						950 001	950 200		
Trailmobile Purchase Order # 30955	11 14 00												960 201	960 300		
											100		940 021	940 120		
Atlantic Transport Company Ltd		25											No USLI Nos			
		12											No USLI Nos			
Subtotals******	---	1015	216	1402	50	50	550	1147	700	2100	600	100			$11,715,184.87	$20,091,057.05
Miscellaneous Equipment******															[illegible]	[illegible]
Totals															$37,212,373.50	$29,[illegible],071.21

* The following is a list of certain equipment leased or to be leased by United States Lines Inc. and certain equipment acquired or to be acquired, leased or to be leased, by USL Leasing Corporation, United States Lines Operations, Inc., Walter Kobbe Leasing of Maine Inc. or Atlantic Transport Company Ltd. Each of USL Leasing Corporation, United States Lines Operations, Inc., Walter Kobbe Leasing of Maine Inc. and Atlantic Transport Company Ltd. is a wholly owned subsidiary of United States Lines Inc. Each of the agreements listed is wholly or partly executory.

** Each USLI number is completed by the addition of a 7th, or 7th and 8th digit to facilitate the functioning of the computer system.

*** A change in the USLI number of this equipment has occurred by the addition of two USLI digits (see footnote **) to facilitate the functioning of the Computer system. A new USLI number in the following range must be assigned to each item of this equipment as such item arrives at a terminal: 940 001 through 943 070.

**** Containers bearing USLI identification numbers 430 241, 430 252, 430 256, 430 258, 430 261, 430 280, 430 435, 430 436, 430 467 and 430 471 have been considered, respectively, as follows: Containers numbered 430 001, 430 007, 430 010, 430 001, 430 005, 430 006, 430 012 and 430 009.

***** Original cost and depreciated values for this equipment are based on original cost and depreciated values for reefer containers bearing USLI identification numbers 430 176 through 430 275 and 430 276 through 430 477.

****** The USLI identification numbers of certain equipment listed in Annex I to this Schedule B. This equipment has been deleted from the original cost and depreciated values listed above.

******* Miscellaneous equipment is listed in Annex II to this Schedule B.

ANNEX I to Schedule B

ANNEX I to Schedule B

USLU IDENTIFICATION NUMBERS OF EQUIPMENT LISTED ON SCHEDULE B WHICH HAS BEEN DESTROYED

202-015
202-067
202-242
202-341
202-377
202-617
430-014
430-189
430-309
910-131
945-077

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ANNEX II* TO SCHEDULE B

MISCELLANEOUS CONTAINER AND CHASSIS EQUIPMENT

Agreement, Vendor, or Lessor	Date	Description	Original Cost	Depreciated Value as of 12/31/70
United States Leasing Corporation (Conditional Sale)	6/10/67	204 Thermo King heating and cooling units	$ 514,316.77	$ 408,595.78
Towmotor Corporation	6/ 3/69	20 Fork lift trucks	160,731.72	67,484.80
Flexi-Van Inc. Lease #76	11/21/66	1 Ottawa Commando Manufacturers serial no. 45398	14,597.60	6,893.32
Flexi-Van Inc. Lease #97	10/10/67	1 Ottawa Commando Manufacturers serial no. 45341	14,597.60	6,893.32
Adamson-Alliance (Horsehay) Ltd.	10/24/69	3 Container cranes	2,796,000.00	2,745,423.00
United States Lines Operations Inc.		European container and chassis spare parts	17,126.94	17,126.94
			$3,517,390.63	$3,252,417.16

* Note that the above schedule does not include certain heating and cooling units purchased as part of overall cost of refrigerated containers. Cost and depreciated book value of such units are included with cost of related containers.

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LIST OF CONTRACTS COVERING EQUIPMENT NOT SUBJECT TO EQUIPMENT LEASE*

Contract	Containers 40' x 8' x 8'6"	Reefer Containers	Open Top Containers 40' x 8' x 8'6"	USLU Identification Numbers From	To	Original Cost
Theurer Purchase Orders	644			413-336	413-999	$1,787,100.00
	784			416-172	417-355	2,175,600.00
		133		430-721	430-853	1,335,719.00
			200	451-166	451-365	701,000.00
	1,428	133	200			$5,999,419.00

* This list is submitted pursuant to Section 10 of Agreement dated as of October 27, 1969 among United States Lines, Inc., Walter Kidde & Company, Inc., Sea-Land Service, Inc. and R. J. Reynolds Tobacco Company.

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LIST OF CHASSIS REGISTRATIONS*

70' Chassis	24' Chassis	40' Chassis	Bodies	USIU Identification Numbers: From	To	Place of Registration
30				934-096	934-125	Germany
		50		954-091	954-141	Germany
95				934-001	934-095	Germany
		40		954-051	954-090	Germany
		80		954-143	954-222	Germany
		50		954-001	954-050	Germany
	116			936-001	936-116	England
	100			936-117	936-216	England
		40		956-001	956-040	England
		200		956-041	956-240	England
		1		952-001		France
40				932-001	932-040	France
		20		952-002	952-021	France
100				930-071	930-170	Holland
		250		950-091	950-340	Holland
50				920-001	920-050	Holland
70				930-001	930-070	Holland
		29		950-001	950-029	Holland
		1		950-030		Holland
		60		950-031	950-090	Holland

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40' Chassis	24' Chassis	40' Chassis	Bogies	USLU Identification Numbers From	To	Place of Registration
24				910-016	910-038	Maine
				910-040		Maine
89				910-041	910-059	Maine
				910-061	910-130	Maine
			20	961-021	961-040	Maine
50				910-646	910-695	Maine
550				910-696	911-245	Maine
"		430		946-001	946-430	Maine
100				963-001	963-100	Maine
200				910-246	910-445	Maine
		75		940-201	940-275	Maine
		70		950-341	950-410	Maine
50				900-001	900-050	Maine
15				910-001	910-015	Maine
114				910-132	910-245	Maine
		198		940-001	940-028	Maine
				940-030	940-055	Maine
				940-057	940-200	Maine
		475		940-276	940-750	Maine
		50		944-501	944-550	Maine
		50		945-001	945-050	Maine
		29		945-051	945-076	Maine
		198		945-078	945-080	Maine
				945-081	945-086	Maine
				945-088	945-173	Maine
				945-175	945-280	Maine
		597		945-281	945-296	Maine
				945-298	945-403	Maine
				945-405	945-437	Maine
				945-439	945-841	Maine
				945-843	945-881	Maine
			30	961-041	961-070	Maine

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20' Chassis	24' Chassis	40' Chassis	Bogies	USLU Identification Numbers From	To	Place of Registration
2				910-039		Hawaii
				910-060		Hawaii
		8		940-029		Hawaii
				940-056		Hawaii
				945-087		Hawaii
				945-174		Hawaii
				945-297		Hawaii
				945-404		Hawaii
				945-438		Hawaii
				945-842		Hawaii
			20	961-001	961-020	Not Registered

This list includes chassis and bogies acquired or to be acquired, leased or to be leased, by United States Lines, Inc., or its subsidiaries, and indicates the place of registration or the intended place of registration.

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SCHEDULE A* TO AGREEMENT OF LEASE AND SUBLEASE

OWNED EQUIPMENT

Owner	20' Containers	Containers 40'x8'x8'	Containers 40'x8'x8'6"	Reefer Containers	Open Containers 40'x8'x5'6"	Open Containers 40'x8'x4'3"	Tanks	USLU Identification Numbers** From	To	Original Cost	Depreciated Value as of 12/31/70
United States Lines, Inc.	1800							200-001	201-800	$ 3,878,331.91	$ 1,901,139.90
	903							202-618	203-330	1,333,933.90	1,278,058.21
	400							208-001	208-100	1,063,207.92	776,618.89
	150							209-001	209-150	419,702.91	317,563.79
		725						400-001	400-725	2,112,663.66	1,690,322.93
		560						401-426	401-985	1,613,315.60	1,373,311.72
		25						409-001	409-025	93,901.28	65,708.93
			950					410-001	410-950	2,831,247.00	2,136,940.49
				1				420-001		8,625.63	6,998.79
				145				430-476	430-620	1,067,563.75	901,228.09
					65			431-101	431-165	239,852.60	199,876.93
						45		440-001	440-045	136,520.00	114,021.51
			2472				100	480-001	480-100	1,031,332.61	146,398.55
Subtotals***	3253	1310	3422	146	65	45	100	414-100	416-171	6,839,800.00	6,668,394.32
Miscellaneous Equipment****										$22,992,362.93	$18,678,783.39
Totals										1,901,661.64	1,135,875.98
										$24,784,224.57	$19,814,659.37

* The following is a list of certain types of equipment owned or to be acquired by United States Lines, Inc.

** Each USLU number is completed by the addition of a 7th check digit to facilitate the use of the Company's computer system.

*** The USLU identification numbers of destroyed equipment are listed in Annex I to this Schedule A. Destroyed equipment has been deleted from the original cost and depreciated values listed above.

**** Miscellaneous equipment is listed in Annex II to this Schedule A.

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ANNEX I to Schedule A

USLU IDENTIFICATION NUMBERS OF EQUIPMENT LISTED ON SCHEDULE A WHICH HAS BEEN DESTROYED

200-181	208-252
200-480	400-092
200-729	400-106
200-805	400-134
200-810	400-159
201-303	400-522
201-551	400-604
201-676	400-625
202-766	409-003
202-843	410-259
203-001	440-012
203-364	440-025

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ANNEX B* TO SCHEDULE A

MISCELLANEOUS CONTAINER AND CHASSIS EQUIPMENT

Owner	Description	Original Cost	Depreciated Value as of 12/31/79
United States Lines Inc	[illegible]	[illegible]	[illegible]
	Additional cost of containers and chassis not allocated to individual units of equipment		
	[illegible]	[illegible]	[illegible]
	Special [illegible]	[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]
	Bell cranes	[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]
	Forklifts and roller chassis mobile device	[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]
	Other top handlings	[illegible]	[illegible]
		[illegible]	[illegible]
	Other spreaders or equipment and mobile cranes		
	Reflectors for power packs	[illegible]	[illegible]
	Mounting brackets	[illegible]	[illegible]
	Set stop connectors [illegible]	[illegible]	[illegible]
	Swing connectors power packs	[illegible]	[illegible]
	The Challenger diesel generator set and related equipment	[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]
		[illegible]	[illegible]
	Other container and cargo handling equipment		
	[illegible]	[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]
	[illegible]	[illegible]	[illegible]

* Note that the owner who fully does not [illegible] Cost and depreciated value of such units as included in the cost of the [illegible]

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SCHEDULE B* TO AGREEMENT OF LEASE AND SUBLEASE

LEASED EQUIPMENT

Agreement, Vendor, or Lessor	Date	20' Chassis	24' Chassis	40' Chassis	Bogies	Adapter Frames	Gen. Sets	20' Containers	Containers 40'x8'x8'	Containers 40'x8'x8'6"	Reefer Containers	Open Top Containers 40'x8'x8'6"	USLU Identification Numbers** From	To	Original Cost	Depreciated Value as of 12/31/78
Wilson Leasing Co. #1371	11-1-66	25											910.016	910.040	$ 81,250.00	$ 56,890.93
Wilson Leasing Co. #1390	11-15-66	90											910.041	910.140	292,500.00	212,797.50
[illegible] Inc. #754	11-22-66					20							960.021	960.040	40,662.22	31,199.42
[illegible] Inc. #750	4-15-67				20								961.021	961.040	32,880.25	24,918.84
[illegible] Inc. #75	10-7-66				20	20							961.001 960.001	961.020 960.020	37,317.81 40,151.20	24,136.73 29,999.80
Fruehauf Corporation	12-27-66	50											911.096	911.125	121,172.66	88,112.32
Gus Schumacher	12-12-66			50									957.001	958.141	281,962.32	210,078.66
[illegible] Leasing Corp. Lease	6-1-67	95					95						961.096 962.001	961.095 962.094	138,615.21 217,200.98	257,724.80 170,181.10
[illegible] Leasing Corp. Conditional Sale	10-30-67			40							141 10		958.058 840.001 841.001 960.001	958.098 840.140 841.010 960.094	140,166.77 1,400,799.77 84,107.50 211,026.99	181,260.97 1,111,295.01 67,522.07 167,649.19
[illegible]	[illegible]						80			2000			111.276	111.275	5,206,554.40	4,760,886.14
[illegible] Corporation Lease	[illegible]	550		140					100	1001			958.001 958.141 960.001 960.141 841.001	958.140 958.160 960.140 960.160 841.010	1,299,000.00 1,155,000.00 75,000.00 260,000.00	1,231,040.29 1,117,112.00 129,960.67 251,040.00
[illegible]	[illegible]	40		20									962.001 962.021	962.020 962.040	111,107.75 74,107.61	110,071.11 65,750.11
[illegible]	[illegible]	100 100 100	100	75 250 75 200				200					960.101 960.120 960.141 960.275 960.[illegible] 960.[illegible] 960.241 960.[illegible]	960.100 960.135 960.160 960.[illegible] 960.[illegible] 960.[illegible] 960.[illegible] 960.[illegible]	113,992.32 530,625.00 267,750.00 [illegible] [illegible] [illegible] [illegible] [illegible]	27,181.72 450,787.50 242,140.77 [illegible] [illegible] [illegible] [illegible] [illegible]
								200 200 147		100 100			962.001 962.021 962.041 962.[illegible]	962.020 962.040 962.060 962.[illegible]	1,605,562.75 [illegible] [illegible] [illegible]	811,618.75 [illegible] [illegible] [illegible]
							160 100					140	958.[illegible] 958.[illegible]	958.[illegible] 958.[illegible]	[illegible] [illegible]	[illegible] [illegible]
[illegible]	[illegible]			50									958.[illegible]	958.222	[illegible]	[illegible]

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Agreement, Vendor, or Lessor	Date	20' Chassis	24' Chassis	40' Chassis	Boxes	Adapter Frames	Gen. Sets	20' Containers	Containers 40'x8'x8'	Containers 40'x8'x8'6"	Reefer Containers	Open Top Containers 40'x8'x8'6"	USLU Identification Numbers** From	To	Original Cost	Depreciated Value as of 12/31/79
USL Leasing Corporation		50											900-001	900-050	$ 101,944.50	$ 71,013.92
		15											910-001	910-015	44,643.90	30,920.05
		115											910-116	910-245	345,569.06	264,567.46
				200									940-001	940-200	572,615.90	435,990.91
				475									940-276	940-750	1,300,808.96	1,087,567.47
				50									944-501	944-550	147,115.50	122,602.94
				50									945-001	945-050	158,933.25	111,253.18
				30									945-051	945-080	100,853.24	71,764.66
				200									945-081	945-280	578,912.05	430,154.32
				601									945-281	945-881	1,619,808.73	1,364,227.59
					30								961-041	961-070	44,995.40	31,619.96
						30							960-041	960-070	60,396.50	45,610.50
United States Lines Operations, Inc		50											920-001	920-050	130,947.50	90,762.55
		70											930-001	930-070	235,660.17	174,744.75
			116										916-001	916-116	416,251.47	314,491.21
				29									950-001	950-029	115,964.78	83,069.64
				1									950-030		9,166.19	7,015.87
				60									950-031	950-090	216,652.83	164,593.93
				1									952-001		3,593.35	2,692.39
				70									954-001	954-050	266,209.42	199,680.74
				90									956-001	956-040	174,770.25	135,260.03
							90						992-181	992-210	104,312.43	89,826.82
Walter Kobbe Leasing of Maine, Inc.		70											910-646	910-695	119,006.00	105,263.06
Carrier Corporation Purchase Order #939	2-19-69						100						990-241	990-340	264,600.00	237,816.60
Trailmobile Purchase Order #36955	11-13-69										100		430-621	430-720	1,001,300.00	941,363.87
Atlantic Transport Company Ltd.		23											See USLU Nos.		34,500.00	11,544.24
		12											See USLU Nos.		29,052.00	28,124.60
Subtotals******		1615	216	1002	70	70	550	1047	700	2100	600	100			$31,715,184.87	$26,691,053.05
Miscellaneous Equipment*****															3,517,390.63	3,372,017.16
Totals															$35,232,575.50	$29,911,070.21

* The following is a list of certain equipment leased or to be leased by United States Lines, Inc. and certain equipment acquired or to be acquired, leased or to be leased, by USL Leasing Corporation, United States Lines Operations, Inc., Walter Kobbe Leasing of Maine, Inc. or Atlantic Transport Company Ltd. Each of USL Leasing Corporation, United States Lines Operations, Inc., Walter Kobbe Leasing of Maine, Inc. and Atlantic Transport Company Ltd. is a wholly owned subsidiary of United States Lines, Inc. Each of the agreements listed is wholly or partly executory.

** Each USLU number is completed by the addition of a 7th check digit to facilitate the use of the Company's computer system.

*** A change in the use of this equipment has necessitated the assignment of new USLU identification numbers to facilitate the functioning of the Company's computer system. A new USLU number in the following range may be assigned to each item of this equipment as such item arrives at a terminal: 943-001 through 943-070.

**** Containers bearing USLU identification numbers 430-241, 430-252, 430-256, 430-266, 430-341, 430-366, 430-445, 430-456, 430-467 and 430-471 have been renumbered, respectively, as follows: 439-001, 439-012, 439-001, 439-007, 439-010, 439-004, 439-005, 439-003, 439-002 and 439-006.

***** Original cost and depreciated values for this equipment are included in original cost and depreciated values for reefer containers bearing USLU identification nos. 430-196 through 430-275 and 430-2 through 430-175.

****** The USLU identification numbers of destroyed equipment are listed in Annex I to this Schedule B. Destroyed equipment has been deleted from the original cost and depreciated values listed above.

******* Miscellaneous equipment is listed in Annex II to this Schedule B.

ANNEX I to Schedule B

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ANNEX I to Schedule B

USLU IDENTIFICATION NUMBERS OF EQUIPMENT LISTED ON SCHEDULE B WHICH HAS BEEN DESTROYED

202-015
202-067
202-242
202-341
202-377
202-617
430-014
430-189
430-309
910-131
945-077

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ANNEX II* TO SCHEDULE B

MISCELLANEOUS CONTAINER AND CHASSIS EQUIPMENT

Agreement, Vendor, or Lessor	Date	Description	Original Cost	Depreciated Value as of 12/31/70
United States Leasing Corporation (Conditional Sale)	6/10/67	291 Thermo King heating and cooling units	$ 514,316.77	$ 408,593.78
Towmotor Corporation	6/13/69	20 Fork lift truck's	160,751.72	67,484.80
Flexi-Van Inc. Lease #76	11/21/66	1 Ottawa Commando Manufacturers serial no. 45398	14,397.60	6,893.32
Flexi-Van Inc. Lease #97	10/10/67	1 Ottawa Commando Manufacturers serial no. 45541	14,397.60	6,893.32
Adamson-Alliance (Horsehay) Ltd.	10/21/69	3 Container cranes	2,796,000.00	2,743,423.00
United States Lines Operations Inc.		European container and chassis spare parts	17,126.94	17,126.94
			$3,517,390.63	$3,252,417.16

* Note that the above schedule does not include certain heating and cooling units purchased as part of overall cost of refrigerated containers. Cost and depreciated book value of such units are included with cost of related containers.

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LIST OF CONTRACTS COVERING EQUIPMENT NOT SUBJECT TO EQUIPMENT LEASE*

Contract	Containers 40' x 8' x 8'6"	Reefer Containers	Open Top Containers 40' x 8' x 8'6"	USLU Identification Numbers From	To	Original Cost
Theurer Purchase Orders	644			413-356	413-999	$1,787,100.00
	784			416-172	417-355	2,175,600.00
		133		430-721	430-853	1,335,719.00
			200	451-166	451-365	701,000.00
	1,428	133	200			$5,999,419.00

* This list is submitted pursuant to Section 10 of Agreement dated as of October 27, 1969 among United States Lines, Inc., Walter Kidde & Company, Inc., Sea-Land Service, Inc. and R. J. Reynolds Tobacco Company.

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LIST OF CHASSIS REGISTRATIONS

20' Chassis	24' Chassis	40' Chassis	Bogies	USLU Identification Numbers From	To	Place of Registration
30				934-096	934-125	Germany
		50		954-091	954-141	Germany
99				934-001	934-095	Germany
		40		954-051	954-090	Germany
		80		954-143	954-222	Germany
		50		954-001	954-050	Germany
	116			936-001	936-116	England
	100			936-117	936-216	England
		40		956-001	956-040	England
		200		956-041	956-240	England
		1		952-001		France
40				932-001	932-040	France
		20		952-002	952-021	France
100				930-071	930-170	Holland
		250		950-091	950-340	Holland
50				920-001	920-050	Holland
70				930-001	930-070	Holland
		29		950-001	950-029	Holland
		1		950-030		Holland
		60		950-031	950-090	Holland

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20' Chassis	24' Chassis	40' Chassis	Reefer	UCIU Identification Numbers From	To	Place of Registration
24				910-016	910-039	Maine
				910-040		Maine
89				910-041	910-060	Maine
				910-061	910-130	Maine
			20	961-001	961-040	Maine
50				910-546	910-595	Maine
440				910-596	911-245	Maine
		430		946-001	946-430	Maine
100				963-001	963-100	Maine
200				910-246	910-445	Maine
		75		940-201	940-275	Maine
		70		950-341	950-410	Maine
50				900-001	900-050	Maine
15				910-001	910-015	Maine
114				910-132	910-245	Maine
		198		940-001	940-028	Maine
				940-030	940-055	Maine
				940-057	940-200	Maine
		475		940-276	940-750	Maine
		50		944-501	944-550	Maine
		50		945-001	945-050	Maine
		29		945-051	945-076	Maine
				945-078	945-080	Maine
		198		945-081	945-085	Maine
				945-088	945-173	Maine
				945-175	945-280	Maine
		597		945-281	945-295	Maine
				945-298	945-403	Maine
				945-405	945-437	Maine
				945-439	945-841	Maine
				945-843	945-881	Maine
			30	961-041	961-070	Maine

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20' Chassis	24' Chassis	40' Chassis	Bogies	USLU Identification Numbers From	To	Place of Registration
2				910-039		Hawaii
				910-060		Hawaii
		8		940-029		Hawaii
				940-056		Hawaii
				945-087		Hawaii
				945-174		Hawaii
				945-297		Hawaii
				945-404		Hawaii
				945-438		Hawaii
				945-842		Hawaii
			20	961-001	961-020	Not Registered

* This list includes chassis and bogies acquired or to be acquired, leased or to be leased, by United States Lines, Inc., or its subsidiaries, and indicates the place of registration or the intended place of registration.

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APPENDIX D

AGREEMENT OF MERGER

AGREEMENT OF MERGER made this 9th day of November, 1970, among R.J. REYNOLDS TOBACCO COMPANY, a corporation organized and existing under the laws of the State of New Jersey (hereinafter called "Reynolds"), WALTER KIDDE & COMPANY, INC., a corporation organized and existing under the laws of the State of Delaware (hereinafter called "Kidde"), RJI CORPORATION, a corporation organized and existing under the laws of the State of Delaware (hereinafter called "RJI"), UNITED STATES LINES, INC., a corporation organized and existing under the laws of the State of Delaware (hereinafter called "U.S. Lines") and SEA-LAND SERVICE, INC., a corporation organized and existing under the laws of the State of Delaware (hereinafter called "Sea-Land").

WHEREAS, U.S. Lines, Kidde, Sea-Land and Reynolds entered into an Agreement (the "Basic Agreement") dated as of October 27, 1969 pertaining to an Equipment Lease and a Time Charter, as those terms were defined in the Basic Agreement; and

WHEREAS, the parties hereto who are party to the Basic Agreement desire to modify and amend the Basic Agreement and the Time Charter (each of such documents, as so amended and modified, being hereinafter individually referred to, respectively, as the "Basic Agreement" and the "Time Charter"); and

WHEREAS, Kidde desires U.S. Lines to merge with RJI, and Reynolds desires that RJI merge with and into

U.S. Lines, upon the terms and subject to the conditions herein set forth and in accordance with the laws of the State of Delaware and upon the approval of this Agreement by the Federal Maritime Commission ("FMC"), the Basic Agreement (insofar as it relates to the intercoastal water carrier facilities and services involved therein) and the Merger (as hereinafter defined) by the Interstate Commerce Commission ("ICC") and such approvals of the Federal Maritime Administration ("FMC") (or the Secretary of Commerce) as may be required by law; and

WHEREAS, Reynolds and Kidde have, contemporaneously with the execution of this Agreement, executed a supplemental agreement (the "Supplemental Agreement") of even date herewith in the form attached hereto as Exhibit A with respect to certain obligations of Reynolds in the event that any of the aforesaid approvals of the FMC, ICC, FMA or the Secretary of Commerce are not obtained or the Merger is otherwise frustrated;

NOW, THEREFORE, the parties hereto agree that the Basic Agreement is hereby amended by adding this Agreement as Exhibit E to the Basic Agreement and the parties further agree as follows:

ARTICLE 1

MERGER

1.1 On the Effective Date of the Merger, RJI shall be merged into U.S. Lines, which shall be the Surviving Corporation, and U.S. Lines on such date shall merge RJI into itself (hereinafter called the "Merger"). The

corporate existence of U.S. Lines, with all its purposes, powers and objects, shall continue unaffected and unimpaired by the Merger, and as the Surviving Corporation it shall be governed by the laws of the State of Delaware and succeed to all rights, assets, liabilities and obligations of RJI in accordance with the Delaware General Corporation Law. The separate existence and corporate organization of RJI shall cease upon the Effective Date of the Merger and thereupon U.S. Lines and RJI shall be a single corporation, to wit, U.S. Lines.

1.2 This Agreement is subject to (a) the prior approval of this Agreement by the FMC and of the Basic Agreement and this Agreement with respect to the intercoastal water carrier facilities and services involved therein by the ICC and (b) such approvals of the FMA (or Secretary of Commerce) as may be required by law, each of which approvals the parties agree to use their best efforts to obtain as promptly as practicable after the date hereof. On the date which is the tenth day after the receipt of the last of such approvals (the "Required Approvals") referred to in the preceding sentence, the Merger shall be consummated unless (x) this Agreement shall have been terminated prior thereto under the termination provisions herein or (y) any of the Required Approvals shall have been granted upon terms or conditions that are unacceptable to Reynolds and Reynolds shall have notified Kidde of its decision not to consummate the Merger or (z) such consummation shall have been enjoined by a court of competent jurisdiction and such injunction shall be in effect. The closing shall be held in the City of Jersey City and State of New Jersey. The time and date at

which this Agreement shall be filed in the Office of the Secretary of State of Delaware in the manner prescribed by the Delaware General Corporation Law is herein called the "Effective Date of the Merger" and shall be conclusively evidenced by the endorsement thereon by such Secretary of the filing date of this Agreement.

ARTICLE 2

CERTIFICATE OF INCORPORATION; BY-LAWS; BOARD OF DIRECTORS; OFFICERS

2.1 The Certificate of Incorporation of U.S. Lines as in effect immediately prior to the Effective Date of the Merger shall be concurrently amended, by an amendment in appropriate form, to provide that the authorized capital stock of the Surviving Corporation shall consist of 100 shares of Common Stock of the par value of $100 per share and as so amended shall be the Certificate of Incorporation of the Surviving Corporation and may be further amended as provided by law. From and after the Effective Date of the Merger said Certificate of Incorporation, as so amended and as the same may be amended from time to time as provided by law, separate and apart from this Agreement, shall be, and may be separately certified as, the Certificate of Incorporation of the Surviving Corporation.

2.2 The By-Laws of RJI as in effect on the Effective Date of the Merger shall be the By-Laws of the Surviving Corporation until the same shall thereafter be altered, amended or repealed in accordance with law, the Certificate of Incorporation of the Surviving Corporation or said By-Laws.

2.3 Such of the directors of U.S. Lines and RJI as shall not have resigned or been removed prior to the Effective Date of the Merger shall be the directors, and such of the officers of U.S. Lines and RJI as shall not have so resigned or been removed shall be the officers, of the Surviving Corporation, to serve in each case until their successors shall have been elected and shall qualify.

ARTICLE 3

CONVERSION OF SHARES

3.1 On the Effective Date of the Merger:

(a) Each of the 100 shares of Common Stock of RJI then issued and outstanding shall be converted into 100 shares of Common Stock, $100 par value, of U.S. Lines; and

(b) The present shares of Common Stock, $1.00 par value, of U.S. Lines (hereinafter called "U.S. Lines Common Stock") issued and outstanding immediately prior to the Merger (excluding any such shares held in the treasury of U.S. Lines, which treasury shares shall cease to exist) shall thereupon be cancelled and retired and shall be converted into the $65,000,000 Promissory Note (hereinafter called the "Note") of Reynolds with the terms and in the form attached hereto as Exhibit B.

3.2 Kidde as the sole holder of all of the shares of U.S. Lines Common Stock issued and outstanding immediately prior to the Merger, upon surrender to

Reynolds of one or more stock certificates for all such shares for cancellation, will receive the Note.

ARTICLE 4

WARRANTIES BY U.S. LINES

4.1 U.S. Lines warrants that:

(a) U.S. Lines is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware, has corporate power to own all of its properties and assets and to carry on its business as presently conducted and as proposed to be conducted. U.S. Lines and each of its Subsidiaries (as hereinafter defined) engaged in coastwide trade is a citizen of the United States duly qualified to engage in coastwide trade, within the meaning of the Shipping Act, 1916, as amended. U.S. Lines has corporate power and is duly authorized by all necessary corporate action to merge with RJI pursuant to this Agreement. Neither U.S. Lines nor any Subsidiary is a party to any revenue pooling agreement which has not been filed with the FMC. The execution and delivery of this Agreement do not, and subject to the approval of the Merger by holders of all indebtedness, mortgages, charters and terminal and equipment leases of U.S. Lines which by the terms of any such documents require such approval and subject to the modification where necessary of arbitration awards, judgments or decrees (which approvals and modifications U.S. Lines shall use its best efforts to obtain as soon as practicable), the consummation of the Merger will not violate any provision of

U.S. Lines' certificate of incorporation or by-laws, or any provision of, or result in the acceleration of any obligation or permit or result in the termination of any right, under any (i) ship mortgage or other material mortgage, charter or indenture or (ii) material arbitration award, judgment or decree, to which U.S. Lines or any Subsidiary is a party or by which it or any Subsidiary is bound. The Board of Directors of U.S. Lines, and Kidde as the sole stockholder of U.S. Lines, have each taken all action required by law, their respective certificates of incorporation, by-laws or otherwise, to authorize the execution and delivery of this Agreement and, when the Required Approvals are obtained and assuming due authorization and execution by the other parties hereto, this Agreement will be a valid and binding agreement in accordance with its terms.

(b) The issued and outstanding U.S. Lines Common Stock consists of 1,000 shares of Common Stock, including no treasury shares. There are no outstanding obligations, options or rights to acquire shares of capital stock of U.S. Lines or any outstanding securities or other instruments convertible into or exchangeable for shares of U.S. Lines capital stock.

(c) A complete schedule of all subsidiaries of U.S. Lines (herein called collectively the "Subsidiaries" or individually a "Subsidiary") is attached hereto as Exhibit C. Such Schedule correctly sets forth the jurisdiction of incorporation and the authorized issued and outstanding capital stock of each Subsidiary. Except in the case of Terminal de Contendores de Santander, a Spanish corporation, a 50% owned company, or as shown in the consolidated balance

sheets referred to below, U.S. Lines owns all of the outstanding stock of each of the Subsidiaries and, as of December 31, 1969, neither U.S. Lines nor any Subsidiary had made any material investment in, or material advance of cash to, any company other than the Subsidiaries. As of September 30, 1970 there are no outstanding options or rights to acquire, or any outstanding securities convertible into, stock of any class of any Subsidiary. Each material Subsidiary is a corporation duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation and has corporate power to own all of its properties and assets and to carry on its business as presently conducted and as proposed to be conducted.

(d) The consolidated balance sheets of U.S. Lines and its consolidated subsidiaries as of December 31, 1969 (audited) and September 30, 1970 (unaudited), and the related consolidated statements of income for the twelve and the nine month periods ended on such dates, including the notes thereto, furnished by U.S. Lines to Reynolds, subject to year-end audit and to year-end adjustments (none of which are expected by Kidde to be material) in the case of the unaudited financial statements (except to the extent of the deferred tax benefits shown thereon that are dependent on U.S. Lines inclusion in consolidated tax returns filed by Kidde or on future profitability of U.S. Lines present fairly the consolidated financial position of U.S. Lines and consolidated subsidiaries as of such dates and the consolidated results of operations of U.S. Lines and consolidated subsidiaries for such periods in accordance with generally accepted accounting principles applicable to subsidized shipping operations and applied on a basis consistent with that of the preceding fiscal year.

(e) Except for (a) liens and mortgages listed in Exhibit E hereto, (b) any Title XI or first preferred ship mortgages placed since September 30, 1970 on any vessel for the sole benefit of U.S. Lines and Subsidiaries, (c) liens and encumbrances arising in the ordinary course of business or incurred since the date of this Agreement to secure financing from banks and other lending institutions, (d) liens or encumbrances adequately covered by insurance (after giving effect to any deductibles or franchises under the applicable policies) and (e) vessels destroyed by accident or *force majeure*, since the date of this Agreement, U.S. Lines or a Subsidiary owns free and clear of any liens, claims, charges, options or other encumbrances, all of the vessels listed in Exhibit D attached hereto. Such Exhibit correctly sets forth the name of each such vessel, its official number (or, in the case of vessels under construction, its contract number); and, in the case of vessels being converted or under construction, the scheduled delivery date after such conversion or construction is completed. The vessels owned by U.S. Lines or Subsidiaries are duly registered and documented under the laws of the United States of America and (except for the passenger vessel "United States" and vessels under construction or as being converted) are being maintained in good condition, working order and repair so as to keep them in the highest classification and rating of the American Bureau of Shipping for vessels of the same age and type with no outstanding recommendations and so as to comply with substantially all applicable regulations of the regulatory agencies of the United States of America. The non-recourse mortgage on the S.S. United States has been amended

so that annual principal payments of $857,000 may be deferred until June 1977, or earlier on the sale of such vessel, and the interest rate on the aggregating deferred portion of principal, as it is deferred each year, will be at the then current effective cost of borrowing to the Government.

(f) There has not been

(i) since September 30, 1970 to the date hereof (x) any material adverse change in the financial condition of U.S. Lines and the Subsidiaries taken as a whole otherwise than as referred to below or as the result of operations in the ordinary course of business, or (y) any material change in the nature of the business, the assets, or the manner of conducting the business of U.S. Lines or any Subsidiary, other than such as may have resulted from the change to non-subsidized operations and the institution of intercoastal service, and other changes in the ordinary course of business none of which has had a material adverse effect on the nature of the business, results of operations, assets, financial condition or manner of conducting the business of U.S. Lines and the Subsidiaries taken as a whole;

(ii) between September 30, 1970 and the date hereof, any damage, destruction or other casualty loss (whether or not covered by insurance) materially and adversely affecting the business, results of operations, assets, financial condition or manner of conducting the business of U.S. Lines and the Subsidiaries taken as a whole;

(iii) since September 30, 1970 any direct or indirect redemption, purchase or other acquisition

of any shares of U.S. Lines Common Stock, or any declaration, setting aside or payment of any dividend or other distribution in respect of the U.S. Lines Common Stock;

(iv) since September 30, 1970 any granting of any option to purchase or other right to acquire U.S. Lines capital stock or stock of any Subsidiary or any issuance of any security convertible into capital stock of U.S. Lines or capital stock of any Subsidiary;

(v) since September 30, 1970 any issuance of shares of U.S. Lines capital stock of any class;

(vi) since September 30, 1970 any increase in the compensation payable or to become payable by U.S. Lines or any Subsidiary to any of its officers, employees or agents over the amount paid at September 30, 1970, or any new employment, bonus or deferred compensation agreement, other than merit increases, increases required by union contracts, or increases in accordance with U.S. Lines' usual and normal compensation and employment policies; or

(vii) since September 30, 1970 any amendment of the Certificate of Incorporation or By-Laws of U.S. Lines.

(g) There are on the date hereof no material liabilities of U.S. Lines or any Subsidiary of any kind whatsoever, whether or not accrued and whether or not determined or determinable (including without limitation any liability for recapture of a subsidy received from the United States of America under the Merchant Marine Act of 1936 or otherwise or any other liability arising out of the conduct of business prior to the date hereof) other than:

(i) liabilities disclosed or provided for in the consolidated balance sheets referred to in Section 4.1(d), including the notes thereto;

(ii) liabilities incurred in the ordinary course of business since September 30, 1970;

(iii) liabilities under contracts incurred in the ordinary course of business since September 30, 1970, none of which, to the knowledge of U.S. Lines, should have a material adverse effect on the consolidated financial position of U.S. Lines and its consolidated subsidiaries; or

(iv) contingent liabilities arising out of any pending or threatened lawsuits (not covered by insurance) set forth in a letter from U.S. Lines to Reynolds dated and delivered on the date hereof (U.S. Lines being of the opinion that adequate provision has been made in the financial statements referred to in Section 4.1(d) for the liability, if any, which may result from such lawsuits);

provided, however, in no event shall U.S. Lines (or Kidde) have any liability for breach of the warranties set forth in this Section 4.1(g) in excess of the lesser of (x) 50% of the damages, costs and expenses (net of related determinable tax benefit to Reynolds or any subsidiary of Reynolds) resulting from such misrepresentations or (y) $5,000,000.

(h) U.S. Lines and its Subsidiaries have all material permits, licenses, franchises, orders, approvals and certificates of public convenience and necessity of United States Federal, state and local regulatory agencies required for the conduct of their businesses and U.S. Lines will use its best efforts to obtain any

required changes in any such existing permits, licenses, franchises, orders or approvals in order to permit U.S. Lines and its Subsidiaries to carry on their business as presently conducted after consummation of the Merger or after performance by Reynolds of its obligations under the Supplemental Agreement.

(i) Except as set forth in the letter from U.S. Lines to Reynolds referred to in Section 4.1(g)(iv) hereof, there are no material claims, actions, suits or proceedings pending or, to the knowledge of U.S. Lines, threatened against or affecting U.S. Lines or any of its Subsidiaries or the properties or business of U.S. Lines or any of its Subsidiaries or affecting Kidde which would prevent or hinder the consummation of the Merger, it being understood and agreed that any claim for misrepresentation under this paragraph (i) shall be subject to the limitation set forth in the proviso at the end of paragraph (g) above.

(j) U.S. Lines and its Subsidiaries have filed all tax returns which are required to be filed prior to the date hereof and have paid, or have set up adequate reserves for the payment of, all taxes required to be paid in respect of the periods covered by such returns and have set up adequate reserves to October 31, 1970 for the payment of all taxes anticipated to be payable in respect of the return period next following the last of said periods. Neither U.S. Lines nor any Subsidiary is on the date hereof delinquent in the payment of any material tax assessment or governmental charge. The term "taxes" includes excise, income, franchise, property, sales, use and employment taxes payable to United States Federal, state, local and foreign taxing authorities.

ARTICLE 5

WARRANTIES BY KIDDE AND REYNOLDS

5.1 The parties hereto understand and agree that the warranties of U.S. Lines contained herein are primarily warranties by and for the benefit of Kidde. Therefore Kidde warrants that the warranties and agreements of U.S. Lines contained herein shall be deemed to have been given and made and shall have the same effect as if given or made by Kidde, and Kidde agrees that if the Merger is completed or if Reynolds complies with its obligations under the Supplemental Agreement any claim for breach of warranty may be asserted solely against Kidde and that Kidde shall have no right of subrogation or other right of recourse against U.S. Lines in respect thereof. Kidde further warrants as follows:

(i) Kidde is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Delaware, and has full power, authority and legal right to execute and deliver this Agreement, the Supplemental Agreement and the Kidde Guaranty (hereinafter referred to) and to perform and observe the respective terms thereof;

(ii) Except as set forth in a letter from Kidde to Reynolds, dated and delivered as of the date hereof, no action, suits or proceedings are pending or, to the knowledge of Kidde, threatened against or affecting Kidde in respect of this Agreement, the Supplemental Agreement and the Kidde Guaranty or which, in the judgment of Kidde, will materially and adversely affect its ability to perform thereunder;

(iii) The Board of Directors of Kidde has taken all action required by law, its certificate of incorporation or otherwise, to authorize the execution and delivery of this Agreement, the Supplemental Agreement and the Kidde Guaranty; no approval of the stockholders of Kidde is required for the execution, delivery or performance of this Agreement, the Supplemental Agreement or the Kidde Guaranty; the Supplemental Agreement and (when the Required Approvals are obtained) assuming due authorization and execution by the other parties hereto, this Agreement and the Kidde Guaranty will be valid and binding agreements of Kidde in accordance with their terms; and

(iv) The execution and delivery of this Agreement, the Supplemental Agreement and the Kidde Guaranty, subject to obtaining the Required Approvals and the approval of all holders of indebtedness for borrowed money, mortgages, charters and leases which by their terms require such approval (which approvals Kidde shall use its best efforts to obtain as soon as practicable), the consummation of the transactions herein and therein contemplated, and the fulfillment of and compliance with the terms and provisions hereof and thereof will not conflict with or result in a breach of any of the terms, conditions or provisions of any rule, regulation, order, injunction or decree of any court or governmental authority in effect at the date of this Agreement or of the certificate of incorporation or by-laws of Kidde, or of any bond, debenture, note, mortgage, indenture,

agreement or other instrument to which Kidde is now a party or by which it may be bound or constitute (with the giving of notice or the passage of time, or both) a default thereunder, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any property of Kidde pursuant to the terms of any such agreement or instrument.

5.2 Reynolds warrants as follows:

(i) Reynolds is a corporation duly incorporated, validly existing and in good standing under the laws of the State of New Jersey and RJI and Sea-Land are each corporations duly incorporated, validly existing and in good standing under the laws of the State of Delaware; RJI and Sea-Land are each citizens of the United States, duly qualified to engage in coastwise trade within the meaning of the Shipping Act of 1916, as amended; subject to obtaining the Required Approvals, Reynolds, RJI and Sea-Land each has full power, authority and legal right to execute and deliver this Agreement and to perform and observe the terms thereof; and Reynolds has full power, authority and legal right to execute and deliver the Supplemental Agreement, the Note and the Reynolds Guaranty (hereinafter referred to) and to perform and observe the respective terms thereof;

(ii) Except as set forth in a letter from Reynolds to Kidde dated and delivered the date hereof, no actions, suits or proceedings are pending, or, to the knowledge of Reynolds, threatened against or affecting Reynolds, RJI or Sea-Land in respect of this Agreement, the

Supplemental Agreement, the Note or the Reynolds Guaranty, or which will materially and adversely affect the ability of itself, RJI or Sea-Land to perform and observe the terms of this Agreement or the ability of Reynolds to perform and observe the terms of the Note, the Supplemental Agreement and the Reynolds Guaranty;

(iii) The Board of Directors of Reynolds has taken all action required by law, its certificate of incorporation or otherwise, to authorize the execution and delivery of this Agreement, the Supplemental Agreement and the Reynolds Guaranty; no approval of the stockholders of Reynolds is required for the execution, delivery or performance of this Agreement, the Supplemental Agreement or the Reynolds Guaranty; the Supplemental Agreement and (when the Required Approvals are obtained) assuming due authorization and execution by the other parties hereto, this Agreement and the Reynolds Guaranty will be valid and binding agreements of Reynolds in accordance with their terms;

(iv) The execution and delivery of this Agreement, the Supplemental Agreement, the Note and the Reynolds Guaranty, and (subject to obtaining the Required Approvals in the case of this Agreement) the consummation of the transactions herein and therein contemplated, and the fulfillment of and compliance with the terms and provisions hereof and thereof will not conflict with or result in a breach of any of the terms, conditions and provisions of any rule, regulation, order, injunction or decree of any court or governmental authority in effect at the date of this

Agreement or of the certificates of incorporation or by-laws of Reynolds, RJI or Sea-Land, or of any bond, debenture, note, mortgage, indenture, agreement or other instrument to which Reynolds, RJI or Sea-Land is now a party or by which any of them may be bound or constitute (with the giving of notice or the passage of time, or both) a default thereunder, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any property of Reynolds, RJI or Sea-Land pursuant to the terms of any such agreement or instrument; the Boards of Directors of Reynolds and RJI, and Reynolds as the sole stockholder of RJI, have each taken all action required by law, their respective certificates of incorporation, by-laws or otherwise, to authorize the execution and delivery of this Agreement, the Supplemental Agreement, the Note, and the Reynolds Guaranty and, when the Required Approvals are obtained and assuming due authorization and execution by the other parties hereto, this Agreement will be a valid and binding agreement in accordance with its terms;

(v) The consolidated financial statements of R.J. Reynolds Tobacco Company and its consolidated subsidiaries as of December 31, 1969 (audited) included in the 1969 Annual Report of Reynolds have been prepared in accordance with generally accepted accounting principles applied on a basis consistent with that of the preceding fiscal year and present fairly the information contained therein; and

(vi) There has not been since January 1, 1970 to the date hereof any material adverse change in

the financial condition of Reynolds and its consolidated subsidiaries, or any material change in the nature of the business, the assets or the manner of conducting the business of Reynolds and its consolidated subsidiaries, other than changes in the ordinary course of business, none of which has had a material adverse effect on the nature of the business, results of operations, assets, financial condition or manner of conducting the business of Reynolds and its consolidated subsidiaries taken as a whole. On June 29, 1970 Reynolds became a wholly-owned subsidiary of R.J. Reynolds Industries, Inc. and on September 1, 1970 Reynolds acquired all the capital stock of American Independent Oil Co. for cash.

ARTICLE 6

CERTAIN COVENANTS

6.1 Reynolds agrees and guarantees (the "Reynolds Guaranty") that it will cause RJI to consummate the Merger on the Effective Date of the Merger in accordance with the provisions of Section 1.2.

6.2 Kidde agrees and guarantees (the "Kidde Company") that it will cause U.S. Lines to consummate the Merger on the Effective Date of the Merger in accordance with the provisions of Section 1.2.

6.3 The parties hereto agree that (a) if this Agreement or the Merger is disapproved, or approved on terms and conditions not acceptable to Reynolds and Reynolds shall have so notified Kidde, this

Agreement, the Basic Agreement, the Time Charter and the Equipment Lease (the "Related Documents") shall be automatically cancelled but the Supplemental Agreement shall remain in full force and effect; and (b) if this Agreement and the Merger are approved on terms and conditions acceptable to Reynolds but the Basic Agreement, the Time Charter or the Equipment Lease are disapproved, such disapproved instrument shall be automatically cancelled or if any such instrument is approved on terms or conditions unacceptable to Reynolds and Reynolds shall have so notified Kidde, this Agreement shall remain in effect but the Basic Agreement, Time Charter or the Equipment Lease (as defined in the Basic Agreement) or whichever of them is approved on terms unacceptable to Reynolds, as the case may be, shall be automatically cancelled unless under the terms of any of the Required Approvals such cancellation would adversely affect the approval of this Agreement or the Merger, but the Supplemental Agreement shall remain in full force and effect.

6.4 The parties hereto agree that (a) if the Merger is consummated all obligations of Kidde and Reynolds with respect to Sections 6 and 7, respectively, of the Basic Agreement, and under the Kidde and Reynolds Guaranties dated October 27, 1969 referred to in the Basic Agreement, shall terminate without any liability of Kidde or Reynolds in respect thereof and all obligations of Sea-Land under Section 10 of the Basic Agreement shall be cancelled; and (b) the Time Charter is hereby amended in accordance with the terms and provisions set forth in Exhibit F hereto.

6.5 U.S. Lines agrees that as soon as practicable it will deliver to Reynolds a "Schedule of Vessels and

Certain Other Equipment of U.S. Lines and its Subsidiaries" which will list all of the vessels, cranes, rolling stock, chassis and containers owned or leased by U.S. Lines or any of the Subsidiaries and will list the country of documentation of all such vessels (specifying those qualified for use in coast-wise trade and the port at which each of such vessels is documented). Such Schedule will also contain a warranty of U.S. Lines that all of the vessels, cranes, rolling stock, chassis and containers owned or leased by U.S. Lines or a Subsidiary are includes therein, and that except as set forth in said Schedule, U.S. Lines or a Subsidiary has good and marketable title to, or a valid leasehold interest in, such property, free and clear of all material claims, liens, charges, options or other encumbrances, except as may be set forth therein, and that substantially all such containers, equipment, cranes and chassis in regular use have been well maintained in accordance with standard containership industry practice and are in good and serviceable condition, reasonable wear and tear excepted.

6.6 U.S. Lines agrees that as soon as practicable it will deliver to Reynolds a schedule entitled "Schedule of Port Facilities of U.S. Lines and its Subsidiaries". Such Schedule will list each such port facility, stating whether it is owned or leased and giving the maturity date, renewal rights, rent and other financial terms of each lease.

6.7 U.S. Lines agrees that as soon as practicable it will deliver to Reynolds a schedule entitled "Schedule of Material Real Property Owned or Leased by U.S. Lines and the Subsidiaries Other Than Port Facilities". Such Schedule will contain a warranty of U.S. Lines

that, except as may be set forth therein, (a) such real property constitutes all material real property and interests in real property reflected in the consolidated balance sheet as of September 30, 1970 referred to in Section 5.1(d), except such as have been disposed of in the ordinary course of business; (b) since the date of such balance sheet and to the date of such Schedule, neither U.S. Lines nor any Subsidiary has purchased or contracted to purchase or otherwise acquire or taken options on any material parcel of real property for use by it; and (c) U.S. Lines or a Subsidiary has good and marketable title to, or a valid and binding lease of, all the real property listed in such Schedule free and clear of all claims, liens, options, charges, or other encumbrances, except for liens referred to in the consolidated balance sheets referred to in Section 4.1(d) or the notes relating thereto, liens in connection with leaseholds or statutory liens not yet delinquent, and minor defects and irregularities in the title to any such real property which do not materially impair the use of such real property for the purposes for which it is held.

6.8 U.S. Lines agrees that as soon as practicable it will deliver to Reynolds a schedule entitled "Schedule of Material Litigation of U.S. Lines and Subsidiaries". Such Schedule will contain a warranty of U.S. Lines that, except as may be set forth therein and except for routine investigations by governmental agencies, during the twelve months prior to the date of such Schedule neither U.S. Lines nor any Subsidiary has been charged with or, to the knowledge of U.S. Lines, threatened in writing with a charge of a violation, or been under investigation with respect to a possible violations, of any material provision of any Federal, state or local law

or administrative ruling or regulation relating in a material way to any of its business practices, its acquisitions of property or any other material aspect of its business, and on the date of such Schedule neither U.S. Lines nor any judgment or decree or order entered in any suit or proceeding brought by any governmental agency or other person against U.S. Lines or such Subsidiary enjoining it in respect of, or the effect of which is to prohibit, any business practice or the acquisition of any property or the conduct of any business in any area.

6.9 U.S. Lines agrees that as soon as practicable it will deliver to Reynolds a schedule entitled "Schedule of Certain Contracts of U.S. Lines and Subsidiaries". Such Schedule will contain a warranty of U.S. Lines that, on the date of such Schedule except for the contracts, agreements, plans, leases and licenses described in said Schedule, neither U.S. Lines nor any Subsidiary is a party to or subject to:

(a) any employment contract or arrangement, oral or written, with any officer, consultant, director or employee (including agreements with labor unions) which is not terminable on 30 days' notice or less without penalty or obligation to make payments after expiration of such 30-day period;

(b) any plan or contract or arrangement, oral or written, providing for bonuses, pensions, options, deferred compensation, retirement payments, profit sharing, or the like;

(c) any lease of personal property other than in the ordinary course of business;

(d) any bunkering or other contract or agreement for the purchase of any materials or supplies (except (i) individual purchase orders or contracts in the ordinary course of business and (ii) other contracts or agreements covering periods not extending more than 180 days from the date thereof;

(e) any contract for the purchase of equipment or any construction, ship conversion or other contract or agreement not otherwise covered by this Section 6.9 or the Schedule provided for herein and involving any expenditure or obligation by it of more than $50,000;

(f) any joint venture contract or arrangement or any other agreement not with employees and involving a sharing of profits;

(g) any charter, contract or agreement for the sale or leasing of its products or the furnishing of services, or any sales agency, broker, distribution or similar contracts except agreements to ship cargo or other contracts on standard forms, copies of which have been furnished to Reynolds, made in the ordinary course of business and which are terminable by U.S. Lines or one of its Subsidiaries on six months' notice or less without penalty or obligation to make payment after the expiration of such six months' period;

(h) any instrument evidencing or related in any way to the indebtedness of U.S. Lines or any Subsidiary in respect of borrowed money by way of direct loan, purchase money obligations, conditional sale, lease-purchase agreement, guarantee or otherwise;

(i) any contract containing covenants limiting the freedom of U.S. Lines or any Subsidiary to compete in any line of business or with any person;

(j) any material license agreement, either as licensor or licensee, not described in any other Schedule delivered pursuant hereto;

(k) any material charter from others; or

(l) any other material contract or agreement (other than leases of eal [sic] property covered by the Schedule referred to in Section 6.7) not of the type covered by any of the other items of this Section 6.9 which (x) is not to be performed by U.S. Lines or a Subsidiary prior to April 30, 1971, or (y) is not by its terms terminable by and without penalty to U.S. Lines or a Subsidiary or any successor or assign of U.S. Lines or such Subsidiary prior to April 30, 1971.

Such Schedule will also contain a warranty of U.S. Lines that except as set forth in such Schedule, all such charters, documents related to indebtedness of U.S. Lines for borrowed money, terminal and equipment leases, bunkering contracts, union contracts and other material contracts, agreements, plans, indentures and licenses are valid and in full force and effect and, to the best of U.S. Lines' knowledge, neither U.S. Lines nor any Subsidiary has breached any material provision of, or is in default (or would be in default but for the passage of time or the giving of notice or both) in any material respect under the terms of, any such charter, documents related to indebtedness for borrowed money (including any ship mortgage) of U.S. Lines, terminal or equipment lease, bunkering contract, union contract or

other material contract, agreement, plan, indenture or license. Such Schedule will identify any material contract, agreement, lease and license which contains any provision relating to a transfer of control of U.S. Lines or the maintenance of its corporate existence or which would purport to require consent prior to the Merger.

6.10 U.S. Lines agrees that as soon as practicable it will deliver to Reynolds a Schedule entitled "Schedule of Licenses and Permits of U.S. Lines and Subsidiaries". Such Schedule shall list as of the date thereof (a) all government permits, licenses and certificates of public convenience and necessity presently held by U.S. Lines and its Subsidiaries, including the dates of issuance and expiration thereof, and (b) all pending applications for government permits, licenses and certificates of public convenience and necessity. Such Schedule will also, except as may be set forth therein, contain a warranty of U.S. Lines that as of the date of such Schedule neither U.S. Lines nor any Subsidiary is threatened with cancellation or withdrawal of any license, permit or certificate included in such Schedule.

6.11 U.S. Lines agrees that as soon as practicable it will deliver to Reynolds a Schedule entitled "Schedule of Insurance Policies of U.S. Lines and its Subsidiaries" which will list all of the insurance carried by U.S. Lines and its Subsidiaries as of the date of such Schedule. Such Schedule will also contain a warranty of U.S. Lines that, except as may be set forth therein, it and the Subsidiaries are as of the date of such Schedule and continuously for the past five calendar years have been, adequately insured with respect to risks normally insured against by companies similarly situated, all the

insurance policies or bonds maintained by U.S. Lines and the Subsidiaries are as of the date of such Schedule valid and in full force and effect and are as of the date of such Schedule not subject to any notice or threat of cancellation or modification and the premiums due in respect of such policies or bonds have been paid, and all calls which have been made as of the date of such Schedule in respect of any shipowner's protection and indemnity insurance so maintained have been paid and U.S. Lines and the Subsidiaries have no further liability in respect of any such calls.

6.12 U.S. Lines agrees that as soon as practicable it will deliver to Reynolds a Schedule entitled "Schedule of Securities (other than of Subsidiaries) owned by U.S. Lines and Subsidiaries". Such Schedule will contain a warranty of U.S. Lines that as of the date of such Schedule such Schedule includes all shares of stock of corporations other than Subsidiaries, all evidences of indebtedness to U.S. Lines or any Subsidiary for money borrowed (other than indebtedness of wholly-owned Subsidiaries to U.S. Line or other wholly-owned subsidiaries, marketable securities purchased as temporary investments, indebtedness represented by or arising out of receivables created or advance made in the ordinary course of business and securities held as collateral) which do not mature within 90 days from the date of this Agreement and all other securities owned by U.S. Lines or any Subsidiary or in which U.S. Lines or any Subsidiary has a beneficial interest. Such Schedule will also identify all securities owned by U.S. Lines or any Subsidiary as of the date of such Schedule which are subject to any restrictions, legal or contractual, on the disposition thereof and state the nature and basis of such restriction.

6.13 U.S. Lines agrees that as soon as practicable it will deliver to Reynolds a schedule entitled "Schedule of Certain Interests of the Officers and Directors of U.S. Lines and its Subsidiaries" which will list as of the date of such Schedule all of the interests of each officer and director of U.S. Lines and its Subsidiaries in any property, real or personal or tangible or intangible, including inventions, patents, trademarks and trade names, used in or pertaining to the business of U.S. Lines or any of its Subsidiaries or is a party to any significant contract with U.S. Lines or any of its Subsidiaries.

6.14 Kidde and U.S. Lines agree that U.S. Lines and Kidde will permit Ernst & Ernst to review and examine the financial statements, books and records of U.S. Lines and its Subsidiaries and will request Price Waterhouse & Co. and Arthur Andersen & Co. to permit Ernst & Ernst to review and examine the working papers of Price Waterhouse & Co. and Arthur Andersen & Co. in respect of U.S. Lines in order to verify the financial statements referred to in Section 4.1(d) hereof.

6.15 On the Effective Date of the Merger U.S. Lines will deliver to Reynolds the resignations of such directors and officers of U.S. Lines as Reynolds may request and the minute books and stock books of U.S. Lines and the Subsidiaries.

6.16 U.S. Lines agrees that it will operate its business, and cause each of its Subsidiaries to operate its business, in a reasonably prudent, competitive, businesslike manner consistent with business practices generally prevailing in the shipping industry at all times subsequent to the date of this Agreement and prior to

the Effective Date of the Merger or the date on which the U.S. Lines Common Stock or the assets of U.S. Lines, as the case may be, are disposed of in accordance with the terms of the Supplemental Agreement. It is understood that Kidde may continue to charge reasonable management fees to U.S. Lines for services rendered in accordance with current practices.

6.17 U.S. Lines agrees that it will maintain in effect its insurance policies presently in effect to the extent such insurance continues to be available.

6.18 U.S. Lines will use its best efforts to obtain all consents of all parties to material contracts, agreements, plans, leases and licenses of U.S. Lines and Subsidiaries and to obtain all modifications where necessary of arbitration awards, judgments or decrees required for the consummation of the Merger.

6.19 U.S. Lines agrees that all Schedules required to be delivered pursuant to Sections 6.5 through 6.13 will be delivered within ninety days from the date of this Agreement, shall be dated the date of delivery and shall contain information as of such date.

6.20 U.S. Lines agrees that it will make timely filing with the Interstate Commerce Commission of all financial and other information required to be so filed, copies of which will be furnished to Reynolds.

6.21 U.S. Lines agrees that no amounts borrowed by it or its Subsidiaries after the date of this Agreement, no cash generated by its or their operations, and none of its or their other assets will be loaned to, invested in or used as credit for, or otherwise made available (except by way of repayment of loans) to any person except U.S. Lines or its Subsidiaries and except in the ordinary course of business.

ARTICLE 7

TERMINATION OF AGREEMENT

7.1 This Agreement and the transactions contemplated hereby may be terminated at any time prior to the Effective Date of the Merger:

(a) by mutual consent of the Boards of Directors of Reynolds and Kidde; and

(b) by either Reynolds or Kidde on or after November 9, 1974 if on or after November 9, 1974 there is in effect a decree or order directing the rescission of the merger in 1969 of the former U.S. Lines into Kidde, whether or not such decree or order has been stayed or is the subject of an appeal.

ARTICLE 8

ACTION TO BE TAKEN BY KIDDE AND U.S. LINES PRIOR TO CLOSING

8.1 On the Effective Date of the Merger Kidde shall furnish Reynolds with:

(a) a certificate of the President or a Vice President of Kidde and of U.S. Lines dated the Effective Date of the Merger that each of the material acts, undertakings and agreements of U.S. Lines and Kidde to be performed on or before the Effective Date of the Merger pursuant to the terms hereof have been duly performed;

(b) a certificate dated the Effective Date of the Merger of the President or a Vice President of U.S.

Lines and Kidde that, except as set forth therein, and except for the warranties expressly stated herein to be given only as of the date of this Agreement, the warranties of U.S. Lines and Kidde contained in this Agreement are true on and as of the Effective Date of the Merger.

(c) copies of the certificates of incorporation and by-laws of U.S. Lines and Kidde, certified in the case of the certificates of incorporation by the Secretary of State of Delaware and, in the case of the by-laws, by the respective secretaries of U.S. Lines and Kidde, and a certificate of the respective secretaries of U.S. Lines and Kidde to the effect that such documents, in the forms so delivered, are then in full force and effect; and

(d) a certified copy of the resolutions adopted by (A) the Boards of Directors of U.S. Lines and Kidde approving this Agreement and authorizing the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and (B) by Kidde, as the sole shareholder of U.S. Lines, adopting this Agreement and approving the Merger;

(e) The following opinion of Donovan Leisure Newton & Irvine, counsel for Kidde and U.S. Lines, dated the Effective Date of the Merger and satisfactory in form and substance to Reynolds and its counsel, to the effect that:

(i) Kidde and U.S. Lines are each corporations duly organized and validly existing and in good standing under the laws of the State of Delaware, each has corporate power to own all of its properties and assets and to carry on its

business as presently conducted, and each has full power and is duly authorized to consummate the transactions contemplated by this Agreement and the Supplemental Agreement, as the case may be; each of the significant Subsidiaries is a corporation duly organized and validly existing and in good standing under the laws of its jurisdiction of incorporation, has full corporate power to own all of its properties and assets and carry on its business as presently conducted, and is duly qualified to do business in the jurisdictions specified in such opinion; all of the outstanding shares of capital stock of U.S. Lines have been duly authorized by all necessary corporate action and are validly issued, fully paid and non-assessable; U.S. Lines and each of its Subsidiaries presently engaged in coastwise trade are citizens of the United States of America, duly qualified to engage in coastwise trade within the meaning of the Shipping Act of 1916, as amended; the execution and delivery of this Agreement and the Supplemental Agreement did not, and the consummation of the Merger will not, violate any provision of the certificate of incorporation or by-laws of Kidde or U.S. Lines, as the case may be, or, to the extent any necessary consents have been obtained (specifying all consents which have not been obtained) any provision of, or result in the acceleration of any obligation or permit or result in the termination of any right under any mortgage, charter, indenture, agreement or other material instru-

ment or material arbitration award, judgment or decree of which such counsel has knowledge to which Kidde is a party or by which it is bound, or to the extent any necessary consents have been obtained (specifying all consents which have not been obtained) any provision of, or result in the acceleration of any right under any ship mortgage or other mortgage, charter, indenture, terminal or equipment lease or material arbitration award, judgment or decree of which such counsel has knowledge to which U.S. Lines or any Subsidiary is a party or by which any of them is bound, and, except to the extent specified in such opinion, will not require any approval, consent, authorization or order of or filing with any Federal, state, local or foreign governmental or regulatory body under any Federal, state, local or foreign law or any rule or regulation of any such body (specifying any such approvals, consents, authorizations or orders which have been obtained) and will not violate or conflict with any other restriction of any kind or character whatsoever of which such counsel has knowledge and to which Kidde or U.S. Lines or any Subsidiary is subject; the Boards of Directors of U.S. Lines and Kidde as the holder of all of the outstanding stock of U.S. Lines have taken all action required by law, the certificates of incorporation and by-laws of U.S. Lines and Kidde, respectively, or otherwise to authorized the execution and delivery of this Agreement and to approve the Merger in accordance with the terms of this Agreement.

and, in the case of the Board of Directors of Kidde, the Supplemental Agreement; and, assuming due authorization and execution by the other parties hereto, this Agreement and the Supplemental Agreement are each legal, valid and binding agreements of Kidde and U.S. Lines, respectively, in accordance with their terms; and

(ii) U.S. Lines or a Subsidiary has good and marketable title to all of the vessels listed in Exhibit D attached hereto (except for any thereof listed in Exhibit D as being under construction or conversion) subject only to any mortgages, liens or other encumbrances listed in Exhibit E hereto or permitted by the exceptions contained in Section 4.1(e) hereof, and any liens or encumbrances adequately covered by insurance (after giving effect to any deductibles or franchises under the applicable policies).

In rendering such opinion, such counsel may rely upon opinions of other counsel and, as to matters of fact, upon certificates of any officer or officers of U.S. Lines or Kidde, provided the extent of such reliance is specified in the opinion.

8.2. It shall be a condition to Reynolds' obligation to consummate the Merger that on the Effective Date of the Merger Kidde shall own all the capital stock of U.S. Lines and Reynolds shall have secured

(a) Certificates of the Secretary or an Assistant Secretary of U.S. Lines and Kidde, respectively, that the resolutions delivered pursuant to Section 8.1(d) hereof have not been rescinded or modified, and

(b) An opinion of Davis Polk & Wardwell to the effect that this Agreement is a valid and binding agreement of each of the parties in accordance with its terms, the merger provided for herein is authorized by the law of Delaware and, when filed with the Secretary of State of Delaware, such merger will be duly and validly effected and U.S. Lines will become a wholly-owned subsidiary of Reynolds. Reynolds will use its best efforts to obtain such opinion.

ARTICLE 9

ACTION TO BE TAKEN BY REYNOLDS PRIOR TO CLOSING

9.1 On the Effective Date of the Merger Reynolds shall furnish Kidde with:

(a) A certificate of the President or a Vice President of Reynolds dated the Effective Date of the Merger that each of the material acts, undertakings and agreements of Reynolds to be performed on or before the Effective Date of the Merger pursuant to the terms hereof shall have been duly performed;

(b) A certificate dated the Effective Date of the Merger of the President or a Vice President of Reynolds that, except as set forth therein, and except for the warranties expressly stated herein to be given only as of the date of this Agreement, the warranties of Reynolds contained in this Agreement are true on and as of the Effective Date of the Merger.

(c) Copies of the certificates of incorporation and by-laws of Reynolds, RJI and Sea-Land, certified in the case of the certificate of incorporation of Reynolds by the Secretary of State of New Jersey, in the case of the certificates of incorporation of RJI and Sea-Land by the Secretary of State of Delaware and in the case of the by-laws of Reynolds, RJI and Sea-Land, respectively, and a certificate of the Secretary of Reynolds to the effect that such documents, in the forms so delivered, are then in full force and effect;

(d) A certified copy of the resolutions duly adopted by (A) the Boards of Directors of Reynolds, RJI and Sea-Land, respectively, approving this Agreement and authorizing the execution and delivery of this Agreement and, in the case of Reynolds, the Note and the Supplemental Agreement, and the consummation of the transactions contemplated hereby and thereby, and (B) Reynolds, as the sole stockholder of RJI, adopting this Agreement and approving the Merger;

(d) The following opinion of Davis Polk & Wardwell, counsel for Reynolds, dated the Effective Date of the Merger and satisfactory in form and substance to Kidde and its counsel, to the effect that:

(i) Reynolds is a corporation duly organized and validly existing and in good standing under the laws of the State of New Jersey and RJI and Sea-Land are each corporations duly organized and validly existing and in good standing under the laws of the State of Delaware; and

(ii) Reynolds, RJI and Sea-Land each has corporate power to own all its respective properties and assets and to carry on its business as presently conducted, and has full power and is

duly authorized to consummate and carry out the transactions contemplated by this Agreement and the Supplemental Agreement, as the case may be; the execution and delivery of this Agreement and the Supplemental Agreement do not, and the consummation of the Merger will not, violate any provision of the certificate of incorporation or by-laws of Reynolds, RJI or Sea-Land, as the case may be, or any provision of, or result in the acceleration of any obligation or permit or result in the termination of any right under any mortgage, charter, indenture, agreement or other instrument, or material arbitration award, judgment or decree of which such counsel has knowledge to which Reynolds, RJI or Sea-Land is a party or by which any of them is bound, and will not require any approval, consent, authorization or order of or filing with any Federal, state, local or foreign governmental or regulatory body under any Federal, state, local or foreign law or any rule or regulation of any such body (or, if any such are required, that they have been duly obtained, specifying any such approvals, consents, authorizations or orders) and will not violate or conflict with any other restriction of any kind or character whatsoever of which such counsel has knowledge and to which Reynolds, RJI or Sea-Land is subject; the Boards of Directors of Reynolds, RJI and Sea-Land, and Reynolds as the sole shareholder of RJI, have each taken all action required by law, their respective certificates of incorporation, by-laws or otherwise, to authorize such execution and delivery of this Agreement and

to approve the Merger in accordance with the terms of this Agreement, and, in the case of the Board of Directors of Reynolds, the Note and the Supplemental Agreement; and, assuming due authorization and execution by the other parties, this Agreement is a valid and binding agreement of Reynolds, RJI and Sea-Land in accordance with its terms; and, assuming due authorization and execution by the other party, the Supplemental Agreement is a valid and binding agreement of Reynolds in accordance with its terms; and the Note has been duly executed by Reynolds and delivered in accordance with the terms of this Agreement, and constitutes a valid and binding obligation of Reynolds in accordance with its terms.

In rendering the opinion referred to in Section 9.1(e), Reynolds' counsel may rely upon opinions of other counsel and, as to matters of fact, upon certificates of any officer or officers of Reynolds provided the extent of such reliance is specified in the opinion of counsel so relying.

9.2 It shall be a condition to Kidde's obligation to consummate the Merger that on the Effective Date of the Merger Reynolds shall own all the capital stock of RJI and Kidde shall have secured

(a) Certificates of the Secretary or an Assistant Secretary of Reynolds and RJI, respectively, that the resolutions delivered pursuant to Section 9.1(d) hereof have not been rescinded or modified, and

(b) An opinion of Donovan Leisure Newton and Irvine to the effect that this Agreement is a valid

and binding agreement of each of the parties in accordance with its terms, the merger provided for herein is authorized by the law of Delaware and, when filed with the Secretary of State of Delaware, such merger will be duly and validly effected and U.S. Lines will become a wholly-owned subsidiary of Reynolds; and that the issuance of shares of U.S. Lines pursuant to Section 3.1 hereof will not result in any violation of the Securities Act of 1933, as amended.

Kidde will use its best efforts to obtain such opinion.

ARTICLE 10

EFFECT OF TERMINATION: RIGHT TO PROCEED

10.1 In the event that this Agreement shall be terminated pursuant to Article 7 or as a result of failing to satisfy the conditions specified in Section 8.2 or 9.2 all further obligations of Reynolds, RJI, Sea-Land, U.S. Lines and Kidde under this Agreement shall terminate without further liability of any of such parties to any other of such parties.

10.2 The sole remedy, except as hereinafter provided in this Section 10.2, of the parties for any breach of the warranties and other provisions of this Agreement shall be damages (net of related determinable tax benefits), the parties expressly waiving any rights to termination, rescission or cancellation hereof except pursuant to Article 7 or as a result of failing to satisfy the conditions of Sections 8.2 or 9.2 hereof. Notwithstanding any claim for damages, the Merger shall be

consummated and the Note shall be delivered on the Effective Date of the Merger pursuant to Article 3 hereof. The parties agree that there would be no adequate remedy at law for any breach of the obligation so to consummate the Merger and deliver the Note, that any such breach would cause irreparable damage and that, therefore, such obligation shall be specifically enforceable.

ARTICLE 11

MISCELLANEOUS

11.1 The warranties included or provided for herein, or in any Schedule or other document delivered pursuant hereto, shall survive the Merger, or any termination of this Agreement, the Supplemental Agreement or any of the Related Documents, and, except as otherwise specifically indicated, shall be deemed to be made, and to relate to the facts and circumstances that prevail, both as of the date of this Agreement and as of the Effective Date of the Merger. Notwithstanding anything that may be considered to be to the contrary herein, the liability of Kidde for breach of warranty (except in the case of a breach of the warranties set forth in Section 4.1(g), the consequences of which are provided for in such Section 4.1(g)) shall not apply to the first $50,000 in the aggregate of any damages or losses incurred in connection with the warranties herein.

11.2 Reynolds, U.S. Lines and Kidde hereby severally warrant, each for itself, that no broker or finder

has been employed by any of them and that all negotiations relative to this Agreement have been carried on directly between them without the intervention of any other person.

11.3 Any notice or other communication required or permitted hereunder shall be sufficiently given if sent by registered or certified mail, postage prepaid, addressed as follows:

To Reynolds, RJI or Sea-Land:
R.J. Reynolds Tobacco Company
Winston-Salem
North Carolina 27102
Attention: Secretary

To U.S. Lines or Kidde:
Walter Kidde & Company, Inc.
9 Brighton Road
Clifton, New Jersey 07012
Attention: Secretary

or such other addresses as shall be furnished in writing by any such party, and any such notice or communication shall have been deemed to have been given as of the date so mailed.

11.4 This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, provided that this Agreement may not be ass8gned by any party without the consent of Reynolds and Kidde.

11.5 This Agreement may be amended with the approval of the Board of Directors of each party hereto at any time prior to the Effective Date of the Merger with respect to any of the terms contained herein.

11.6 This Agreement, the Supplemental Agreement and the Related Documents embody the entire

agreement and understanding between all of the parties hereto relating to the subject matter hereof.

11.7 This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

11.8 RJI and Reynolds represent and agree that they will acquire the shares of U.S. Lines capital stock to be issued pursuant to Section 3.1 hereof for investment and not with a view to any public sale or distribution thereof.

11.9 This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties.

IN WITNESS WHEREOF, this Agreement has been signed outside of the City and State of New York by the President or a Vice President of and the Secretary or an Assistant Secretary of each of the corporations, and each of the corporations has caused its corporate seal to be hereunto affixed all as of the date first above written.

R.J. REYNOLDS TOBACCO COMPANY

By

[Corporate Seal]
ATTEST:

WALTER KIDDE & CO., INC.

By

[Corporate Seal]
ATTEST:

RJI CORPORATION

By

[Corporate Seal]
ATTEST:

UNITED STATES LINES, INC.

By

[Corporate Seal]
ATTEST:

SEA-LAND SERVICE, INC.

By

[Corporate Seal]
ATTEST:

EXHIBIT A

SUPPLEMENTAL AGREEMENT

AGREEMENT made this 9th day of November, 1970, among R.J. REYNOLDS TOBACCO COMPANY, a corporation organized and existing under the laws of the State of New Jersey (hereinafter called "Reynolds") and WALTER KIDDE & COMPANY, INC., a corporation organized and existing under the laws of the State of Delaware (hereinafter called "Kidde").

WHEREAS, Reynolds, Kidde, RJI Corporation, a corporation organized and existing under the laws of the State of Delaware (hereinafter called "RJI"), United States Lines, Inc., a corporation organized and existing under the laws of the State of Delaware (hereinafter called "U.S. Lines") and Sea-Land Service, Inc., a corporation organized and existing under the laws of the State of Delaware, have, concurrently with the execution and delivery of this Agreement, entered into an Agreement of Merger (the "Merger Agreement") of even date pertaining to a merger of RJI into U.S. Lines (the "Merger") on the terms set forth in the Merger Agreement; and

WHEREAS, it is the intention and understanding of the parties hereto that, if the Merger Agreement is not terminated pursuant to Article 7 or as a result of failure to satisfy conditions in Sections 8.2 or 9.2 thereof, then should the Merger not be consummated for any reason whatsoever the right of Kidde to be paid for U.S. Lines the consideration specified in the Merger Agreement or its equivalent as specified herein shall in no way be impaired; and

WHEREAS, the Merger Agreement or aspects thereof or of the Merger are subject to approval by the Federal Maritime Commission ("FMC"), the Interstate Commerce Commission ("ICC") and the Federal Maritime Administration ("FMA") (or the Secretary of Commerce, who shall be deemed to be included in any reference herein to approval or disapproval by FMA) and K dde wishes to receive satisfactory assurances that if all such approvals (the "Required Approvals") are not obtained or if consummation of the Merger becomes impossible for any other reason except by reason of termination of the Merger Agreement pursuant to Article 7 or as a result of failure to satisfy conditions in Sections 8.2 or 9.2 thereof, it will receive the consideration referred to above and Reynolds is willing to provide such assurances;

NOW, THEREFORE, in consideration of the mutual undertakings in the Merger Agreement and herein, Reynolds and Kidde agree as follows:

Section 1. Subject to the provisions of Article 7 and the conditions in Sections 8.2 and 9.2 of the Merger Agreement, Reynolds agrees that if the Merger Agreement or any material aspect thereof or of the Merger is disapproved by the FMC, ICC or FMA, or if approvals of the FMC, ICC and FMA required in connection with the Merger are not obtained prior to twelve months before the latest permissible maturity date of the Note (as defined in the Merger Agreement), or if any such approvals are obtained but contain terms or conditions unacceptable to Reynolds, or if the consummation of the Merger is barred by an order or decree of any court or governmental agency, which order or decree of any court or governmental agency,

which order or decree has become final and is not subject to further appeal or proceedings, subject to the provisions of Sections 2 and 3 hereof Reynolds shall have the obligation, to be performed within twenty-four months after the earlier of (a) the entry of such final order or decree or (b) a disapproval by the FMC, ICC or FMA of the Merger or any material aspect thereof, or (c) approval of the Merger or any material aspect thereof by such agencies on terms or conditions unacceptable to Reynolds, but in no event later than November 9, 1976, to cause to be produced a ready and willing substitute party to whom it shall assign all of its rights in the premises and who shall have all the rights and privileges and shall assume all the obligations Reynolds and RJI would have had under the Merger Agreement.

Subject to its right to approve the credit of such substitute party or, alternatively, receive further assurance with respect thereto from Reynolds, as hereinafter provided, Kidde consents to such assignment subject to receipt of all necessary approvals.

Subject to the last paragraph of this Section 1, such substitute party shall consummate the transaction within sixty days of the date of notification to Kidde of the selection of the substitute party. Performance by such substitute party, at its option, may be through purchase of the Common Stock of U.S. Lines or through purchase of its assets and assumption of its liabilities, rather than through merger. Performance of Reynolds' obligations under the first sentence of this Section will have been accomplished when and only when such substitute party, concurrently with such acquisition (and assumption of liabilities, if any) shall have delivered to Kidde

(a) a negotiable note in the principal amount of $65,000,000 having a maturity date and an interest rate identical with, and having substantially the other terms of, the Note (as defined in the Merger Agreement) and with a credit acceptable to Kidde or with such note guaranteed by Reynolds if such credit is not so acceptable, or

(B) a negotiable note having a maturity date and an interest rate identical with, and having substantially the other terms of, the Note and with a credit acceptable to Kidde or with such note guaranteed by Reynolds if such credit is not so acceptable in a principal amount which, together with the amount of a note of Reynolds simultaneously delivered to Kidde by Reynolds, shall aggregate $65,000,000 in principal amount, or

(C) other consideration acceptable to Kidde.

In the event such substitute party is a person which because of the nature of its business is required to obtain the approval of one or more administrative agencies as a condition to consummating the acquisition, such additional time as may be required to obtain such approval or approvals shall be made available, provided, however, that consummation of such acquisition by the substitute party shall have been accomplished by November 9, 1976. Such substitute party shall be obligated to use its best efforts to obtain such approvals as promptly as practicable.

Section 2. It is understood and agreed that neither Reynolds nor any subsidiary or affiliate of Reynolds shall have any control over the finding or designation of any substitute party pursuant to Section 1 above or as hereinafter provided. Such control shall be vested in

such financial institution as shall be designated by Reynolds within thirty days after it becomes obligated under Section 1 to cause a substitute party to be found. Neither Reynolds nor any subsidiary or affiliate of Reynolds shall have any standing to object to any substitute party under Section 1 designated by such financial institution and acceptable to Kidde unless such purchaser represents a credit with respect to its note in the principal amount of $65,000,000 which is determined by Kidde to be unacceptable without the guaranty of Reynolds or the fair value of U.S. Lines is in the judgment of Reynolds in excess of the price offered by such substitute party.

Section 3. Unless the acquisition shall have been accomplished as provided in the Merger Agreement or as provided in Section 1 above, the financial institution selected as provided in Section 2 above shall be authorized and empowered to make disposition of U.S. Lines, its Common Stock or assets (together with assumption of its liabilities) in public or private sale or sales or otherwise, in the manner hereinafter specified in Section 4. Kidde agrees to cooperate fully to effect such disposition and to use its best efforts to obtain all necessary approvals.

From the proceeds of any such disposition or sale, after deduction of fees and expenses incident thereto, there shall be delivered to Kidde for its own account or for the account of U.S. Lines, as the case may be, an amount equal to the principal of the Note (as identified in the Merger Agreement) and accrued interest thereon in full satisfaction of the Note and of all obligations of Reynolds giving rise to the Note. If the amount of the net proceeds of such sale or disposition is less than the

amount of the principal and accrued interest on the Note, the amount delivered to Kidde shall be credited as part payment of the Note, first to accrued interest and then to principal, and the Note shall be delivered to Kidde for its own account or for the account of U.S. Lines, as the case may be. Any excess in net proceeds from such sale or sales shall be paid to Reynolds.

Section 4. In order to effect the disposition of U.S. Lines as desired by Kidde in the event that neither Reynolds nor a substitute party as provided in Section 1 is available and able to accomplish its acquisition, the financial institution chosen as provided in Section 2 hereof shall:

(i) Cause a public sale of all of U.S. Lines Common Stock to be made; or

(ii) Cause a distribution of the U.S. Lines Common Stock to be made to the stockholders of Reynolds and promptly thereafter deliver, or cause to be delivered, to Kidde the Note; or

(iii) Cause the vessles and related containers, chassis and other equipment necessary in the operation of such vessels of U.S. Lines to be sold at competitive bidding and cause the other assets of U.S. Lines to be sold, in each case at prices acceptable to Reynolds and resulting in the satisfaction of all liabilities of U.S. Lines or their assumption by a purchaser or purchasers with credit acceptable to Kidde;

(iv) Utilize any combination of the methods set forth in (i), (ii) or (iii) hereinabove in order to dispose of the U.S. Lines Common Stock or the assets and liabilities of U.S. Lines, as the case may be, and to ensure to Kidde's satisfaction considera-

tion to Kidde of a value equal to the Note, it being understood that, if not materially disadvantageous to Reynolds, it is intended that such disposition shall be by one of the methods set forth in (i), (ii) or (iii) in order to preserve U.S. Lines as an operating entity. The consideration to be furnished to Kidde as a result of dispositions effected pursuant to this paragraph shall be delivered to Kidde as promptly as practicable after such dispositions, which shall be completed within the period specified in Section 1 above.

It is understood and agreed that any disposition pursuant to (i), (ii) or (iii) above shall be subject to the condition that Kidde shall have first received an opinion, satisfactory in form and substance to Kidde and its counsel, of Davis Polk & Wardwell, or other counsel acceptable to Kidde, that such disposition will not violate the Securities Act of 1933.

Section 5. If the undertaking of Reynolds herein is to be satisfied by a public sale of the stock of U.S. Lines, Kidde agrees to cause U.S. Lines to prepare and file a registration statement under the Securities Act of 1933 with respect to such shares and to use its best efforts to cause the registration to become effective as promptly as practicable. All expenses in connection with such registration shall be borne by U.S. Lines.

Kidde agrees that it will cause U.S. Lines (i) on the effective date of the registration statement relating to the U.S. Lines Common Stock, and for such period thereafter as in the opinion of counsel for the underwriters for such stock a prospectus is required by law to be delivered in connection with sales of U.S. Lines Common Stock by an underwriter with respect to

the U.S. Lines Common Stock or by a dealer, to use its best efforts to furnish at U.S. Lines' expense such number of copies of a prospectus relating to the U.S. Lines Common Stock and meeting the requirements of Section 10 of the Securities Act of 1933, as such underwriters or dealers may from time to time reasonably request; (ii) during the period referred to in (i) above, if any event shall occur as a result of which it is necessary to amend or supplement any such prospectus, to use its best efforts to furnish to such underwriters or dealers at U.S. Lines' expense in reasonable quantities either amendments to such prospectus or supplements thereto; and (iii) to use its best efforts to assist the underwriters at U.S. Lines' expense in efforts to qualify the shares for offer and sale under the securities or blue sky laws of such States as the underwriters shall reasonably request.

It is understood and agreed that is such sale is being effected on a "best efforts" basis U.S. Lines will not be free to withdraw its registration under the Securities Act of 1933 of any of the U.S. Lines Common Stock until the sale thereof is complete or the twenty-four month period referred to in Section 1 expires, whichever event occurs first.

Kidde will cause U.S. Lines to agree to indemnify and to hold harmless Kidde, Reynolds, each underwriter selling such U.S. Lines Common Stock and each person, if any, who controls any such underwriter or Kidde or Reynolds against any and all losses, claims, damages or liabilities (including legal and other expenses incurred in defending against the same), joint or several, to which Kidde, Reynolds, or such underwriter or controlling person may become subject under the Securities Act of

1933, arising out of or based upon (i) any untrue statement or alleged untrue statement or any post-effective amendment thereof, or the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading or (ii) any untrue or alleged untrue statement of a material fact contained in any preliminary prospectus, if used prior to the effective date of the registration statement, or contained in the final prospectus (as amended or supplemented, if U.S. Lines shall have filed any amendment thereof or supplement thereto), or the omission or alleged omission to state therein a material fact necessary in order to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided, however, that the indemnity agreement contained in this paragraph shall not apply to any such losses, claims, damages, liabilities or actions arising out of, or based upon any such untrue statement, or any such omission or alleged omission, if such statement or omission was made in reliance upon information furnished to U.S. Lines by or on behalf of any underwriter or any person who controls any underwriter for use in connection with the preparation of the registration statement or the preliminary prospectus or the final prospectus or any amendment or supplement.

Kidde will also cause U.S. Lines to cause each underwriter to indemnify and hold harmless Kidde, Reynolds and U.S. Lines, each of its directors, each of its officers who have signed the Registration Statement, and each person, if any, who controls any of them within the meaning of the Act, against any losses, claims, damages or liabilities, joint or several, to which

any of them or any such director, officer or controlling person may become subject, under such Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in the registration statement or any preliminary prospectus or prospectus, or any amendment or supplement thereto, or arise out of or are based upon the omission or the alleged omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent, but only to the extent, that such untrue statement or alleged untrue statement or omission or alleged omission was made in the registration statement, such preliminary prospectus or prospectus, or such amendment or supplement, in reliance upon and in conformity with written information furnished by such underwriter directly or indirectly specifically for use in the preparation thereof; and will reimburse any legal or other expenses reasonably incurred by any of them or any such director, officer or controlling person in connection with investigating or defending any such loss, claim, damage, liability or action.

Section 6. Kidde agrees to indemnify and save harmless U.S. Lines and any purchaser of the U.S. Lines Common Stock or assets of U.S. Lines in respect of any Federal income tax liability asserted pursuant to Federal Income Tax Regulation §1.1502-6 in respect of periods prior to the Merger or such purchase if U.S. Lines has heretofore been or is hereafter and prior to the Merger or such purchase included in the consolidated Federal income tax returns of Kidde.

Section 7. Kidde guarantees to Reynolds that

(A) the warranties of U.S. Lines set forth in the Merger Agreement are true and correct;

(B) the warranties of U.S. Lines to be set forth in the Schedules to be furnished pursuant to the Merger Agreement will be true and correct when such Schedules are delivered; and

(C) all warranties of U.S. Lines which, by the terms of Section 8.1 of the Merger Agreement, are required to be true and correct as of the Effective Date of the Merger will be true and correct as of the later of (i) the Effective Date of the Merger or (ii) the date of completion of performance by Reynolds of its obligations under this Supplemental Agreement.

Kidde further guarantees to Reynolds that, whether or not the Required Approvals are obtained, U.S. Lines and Kidde will each perform all its agreements and undertakings set forth in the Merger Agreement until the later of the dates mentioned in clauses (i) and (ii) of (C) above.

The parties hereto understand and agree that the warranties and agreements of U.S. Lines contained in the Merger Agreement are made solely for the benefit of Kidde. Therefore Kidde agrees that if the Merger is completed or if Reynolds complies with its obligations under this Agreement any claim for any breach of warranty or agreement on the part of U.S. Lines may be asserted solely against Kidde and that Kidde shall have no right of subrogation or other right of recourse against U.S. Lines in respect of any such breach of warranty or agreement.

Reynolds guarantees to Kidde that

(A) the warranties of Reynolds set forth in the Merger Agreement are true and correct and that

(B) all warranties of Reynolds which, by the terms of Section 9.1 of the Merger Agreement, are required to be true and correct as of the Effective Date of the Merger, will be true and correct as of the later of (i) the Effective Date of the Merger or (ii) the date of completion of performance by Reynolds of its obligations under this Supplemental Agreement.

Reynolds further guarantees to Kidde that, whether or not the Required Approvals are obtained, it will perform all its agreements and undertakings set forth in the Merger Agreement until the later of the dates mentioned in clauses (i) and (ii) of (B) above.

Section 8. Reynolds and Kidde agree that within ten days after the date (a) Reynolds becomes obligated to act under Section 1 hereof or (b) Reynolds notifies Kidde in writing that it has elected to proceed under Section 1, Reynolds will deposit the Note and Kidde will deposit all shares of U.S. Lines Common Stock owned by it on the date hereof with The Chase Manhattan Bank (or such other Bank as the parties may agree upon) as Escrow Agent, acting under a suitable Escrow Agreement pursuant to and consistent with the provisions of this Agreement.

Section 9. Kidde and Reynolds agree that if the Merger is consummated and thereafter there is entered a final decree or order directing the rescission of the merger in 1969 of the former U.S. Lines into Kidde, Kidde will either (a) deliver to Reynolds the Note it received in the Merger provided for in the Merger

Agreement in exchange for the interest in U.S. Lines which Reynolds hold immediately following such rescission or (b) Reynolds and Kidde will submit to the Federal Court for the Sourthern District of New York for a determination of the relative rights of Reynolds and Kidde as a result of such rescission.

Section 10. The sole remedy except as hereinafter provided in this Section 10 of the parties to the Merger Agreement and this Agreement for any breach of the warranties and other provisions of the Merger Agreement or this Agreement shall be damages (net of related determinable tax benefits), the parties expressly waiving any rights to termination, rescission or cancellation of the Merger Agreement and this Agreement except pursuant to Article 7 or as a result of failing to satisfy the conditions of Sections 8.2 or 9.2 of the Merger Agreement. Notwithstanding any claim for damages, the Merger shall be consummated and the Note shall be delivered on the Effective Date of the Merger pursuant to Article 3 of the Merger Agreement. The parties agree that (a) there would be no adequate remedy at law for any breach of the obligation so to consummate the Merger and deliver the Note, that any such breach would cause irreparable damage and that, therefore, such obligation shall be specifically enforceable and (b) that no claim for damages may be asserted by any party to the Merger Agreement (other than under Sections 8.2 and 9.2 of the Merger Agreement or with respect to the due authorization, execution, delivery and corporate power to enter into the Merger Agreement and this Agreement and to effect the transactions provided for in the Merger Agreement and this Agreement) unless and until the Merger has been

consummated and the Note delivered. Reynolds agrees that it will not permit RJI or Sea-Land, and Kidde agrees that it will not permit U.S. Lines, to assert any such claim prior to the time specified in the preceding clause (b).

Section 11. Any notice or other communication required or permitted hereunder shall be sufficiently given if sent by registered or certified mail, postage prepaid, addressed as follows:

To Reynolds:

R.J. Reynolds Tobacco Company
Winston-Salem
North Carolina 27102
Attention: Secretary

To Kidde:

Walter Kidde & Company, Inc.
9 Brighton Road
Clifton, New Jersey 07012
Attention: Secretary

or such other addresses as shall be furnished in writing by any such party, and any such notice or communication shall have been deemed to have been given as of the date so mailed.

Section 12. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, provided that this Agreement may not be assigned by any party without the consent of the other parties.

Section 13. This Agreement may be amended with the approval of the Board of Directors of each party hereto at any time prior to the Effective Date of the Merger with respect to any of the terms contained herein.

Section 14. This Agreement, the Merger Agreement, and the Related Documents embody the entire agreement and understanding between all of the parties hereto relating to the subject matter hereof.

Section 15. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware.

IN WITNESS WHEREOF, this Agreement has been signed by the President or a Vice President of Reynolds and by the Chairman or the President or a Vice President of Kidde all as of the date first above written.

R.J. REYNOLDS TOBACCO COMPANY

Witness:

By
President

WALTER KIDDE & COMPANY, INC.

Witness:

By
Chairman

EXHIBIT B

Registered
No. 1

$65,000,000
Dated: November 9, 1970

R.J. REYNOLDS TOBACCO COMPANY
8% Promissory Note

R. J. REYNOLDS TOBACCO COMPANY, a New Jersey corporation (herein called the "Company").

having its principal place of business in Winston-Salem, North Carolina, for value received, hereby promises to pay to WALTER KIDDE & COMPANY, INC. or registered assigns, the principal sum of $65,000,000 on , 19 * in such coin or currency of the United States of America as at the time of payment shall be legal tender for payment of public or private debts. The Company further promises to pay, after the date of delivery hereof, interest on the unpaid balance of said principal sum at the rate of 8% per annum (computed on the basis of a 360-day year of twelve 30-day months), in like coin or currency, from the date hereof, in semi-annual installments, the first such installment to be due and payable May 9, 1971 and subsequent installments to be due and payable on each November 9 and May 9 thereafter until payment of the principal hereof has been made or duly provided for; provided, however, that, as to any installments of interest which by the terms hereof became due prior to the date of delivery of this Note (or of the first of the series of Notes of which this is a member, if this Note is not the first of such series) the Company shall in addition be obligated to pay, and hereby promises to pay, interest on each such installment at the rate of 6%

* The date to be inserted shall be determined as follows: If the Effective Date of the Merger (as such term is defined in the Agreement of Merger of even date herewith among the Company, Kidde, RJI Corporation, United States Lines, Inc. and Sea-Land Service, Inc.) is on or prior to November 9, 1975, then the date to be inserted shall be the later of the Effective Date of the Merger or November 9, 1974. If the Effective Date of the Merger shall not have occurred by November 9, 1975, the date to be inserted shall be November 9, 1976.

per annum (computed on the basis of a 360-day year of twelve 30-day months) from the due date of such installment to the date payment of such installment has been made or duly provided for; provided further that in any event all accrued and unpaid interest on this Note and interest on unpaid installments of interest shall be due and payable on , 19 **.

This Note may be exchanged for other notes (which together with this Note are herein referred to as the "Notes") of the Company which shall be issuable in denominations of $1,000,000 and any integral multiple of $1,000,000 except that the Company shall not be required to exchange or register a transfer of any Note on, or for a period of ten business days next preceding, any interest payment date, or to register a transfer to anyone other than a financial institution or a successor to the business and assets of Kidde and except that the Company shall not be required to make any such exchange or registration of transfer if this would result in there being more than 25 holders of Notes.

So long as any Note remains outstanding and unpaid, the Company agrees that:

(a) a register will be maintained at the office of the Company, Winston Salem, North Carolina where the Notes may be presented for payment, registration of transfer or exchange as hereinafter provided, which register shall be kept subject to such reasonable regulations as the Company may prescribe, and the Company shall register the names and addresses of the holders of the Notes

** The date to be inserted shall be the earlier of the Effective Date of the Merger or November 9, 1976.

and shall register the transfer of Notes as provided herein;

(b) upon due presentation for registration of transfer of any Note at such office at any time at the request of the holder of such Note and upon surrender of such Note for such purpose to the Company at such office, the Company will execute, register and deliver in exchange therefor a new Note or Notes equal in aggregate principal amount to the unpaid principal amount of such Note, dated the date to which interest has been paid on the Note surrendered if any interest has been paid on such Note or dated November 9, 1970 if no interest has been paid on such Note and registered in such name or names as the holder of such Note may request, provided that each Note presented or surrendered for registration of transfer, exchange or payment shall (if so required by the Company) be duly endorsed by or accompanied by a written instrument or instruments of transfer in form satisfactory to the Company duly executed by the holder thereof or his attorney duly authorized in writing; and

(c) no service charge shall be made for any exchange or registration of transfer of Notes, but the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with the transfer of any Note.

All requests, communications and transmissions hereunder or under or in respect of any Note shall be in writing and shall be deemed to have been given or made when delivered, or mailed first-class postage,

prepaid, or delivered to the telegraph office,

(a) if to any holder of any Note, at the registered address of such holder,

(b) if to the Company, at Winston Salem, North Carolina 27102, Attention: Secretary, or at such other address in the United States of America as may have been furnished to each holder of the Notes in writing by the Company.

Prior to due presentment for registration of transfer of this Note, the Company may deem and treat the registered holder hereof as the absolute owner hereof (whether or not this Note shall be overdue and notwithstanding any notation of ownership or other writing hereon by anyone other than the Company) for the purpose of receiving payment of or on account of the principal of or interest on this Note and for all other purposes, and the Company shall not be affected by any notice to the contrary. All payments made to the registered holder hereof shall be valid and effectual to satisfy and discharge the liability upon this Note to the extent of the sum or sums so paid.

No recourse for the payment of the principal of or interest on this Note, or for any claim based hereon or otherwise in respect hereof, and no recourse under or upon any obligation, covenant or agreement of the Company in any Note, or because of the creation of any indebtedness represented thereby, shall be had against any incorporator, stockholder, officer or director, as such, past, present or future, of the Company or of any successor corporation, either directly or through the Company or any successor corporation, whether by virtue of any constitution, statute or rule of law or by the enforcement of any assessment or penalty or

otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issue hereof, expressly waived and released.

No provision of this Note shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and interest on this Note at the times and place and at the rate and in the coin or currency herein prescribed.

Nothing contained in the Notes shall be deemed to prevent the merger or consolidation of the Company with or into or the sale of all the assets of the Company to or the liquidation of the Company into any other corporation or distribution to its stockholders of assets or business such as to materially and adversely affect its ability to perform its obligations hereunder, provided either the Company shall be the continuing corporation or the successor or transferee corporation (if other than the Company) or distributees, as the case may be, shall expressly assume the due and punctual payment of the principal of and interest on the Notes, according to their tenor, and the due and punctual performance and observance of all the covenants and conditions of the Notes to be performed by the Company.

By the acceptance hereof and as part of the consideration for the issue hereof the holder of this Note expressly agrees with the Company that such holder is acquiring this Note for investment and not with a view to the public sale or distribution thereof or with any present intention of selling or otherwise distributing it.

This Note shall be construed and enforced in accordance with and governed by the laws of the State of North Carolina.

IN WITNESS WHEREOF, R.J. Reynolds Tobacco Company has caused this Note to be executed in its corporate name by the manual signature of two of its officers under its corporate seal in Winston-Salem; North Carolina.

R.J. REYNOLDS TOBACCO COMPANY

By

and

ATTEST:

Secretary

EXHIBIT C

Schedule of Subsidiaries of U.S. Lines

The Atlantic Transportation Co., Ltd.	England
Authorized - 50,000 ordinary 100,000 preference Issued and Outstanding - 50,000 ordinary	
Baltimore Mail Steamship Company	Delaware
Authorized - 1000 no par Issued and Outstanding - 100	
Roosevelt Steamship Co. Inc.	Delaware
Authorized - 22,000 Issued and Outstanding - 1000 no par	

Service De Consignation Atlantique Authorized - 100 ordinary Issued and Outstanding - 100	France
United States Lines Company Limited Authorized - 50 no par Issued and Outstanding - 50	Canada
U.S.L. Leasing Corporation Authorized - 50,000 no par Issued and Outstanding - 3	Maine
United States Lines Operations, Inc. Authorized - 200 no par Issued and Outstanding - 200	New York
United States Lines Societe Maritime Anversoide, S.A. Authorized - 1000 no par Issued and Outstanding - 1000	Belgium
Walter Kidde Leasing of Maine Authorized - 500 no par Issued and Outstanding - 3	Maine
Terminal de Contenedores de Santander 50% Owned No shares issued or outstanding	Spain
U.S. Lines, Inc. Authorized - 213,858 - $10 par preference 2,400,000 - $1 par common No shares issued or outstanding	Delaware

EXHIBIT D

UNITED STATES LINES, INC.
Ships Owned
Ships Under Construction/Conversion

Ships Owned	Ship Number
American Lancer	514261
American Lynx	517450
American Lark	518444
American Liberty	516464
American Legion	515155
American Astronaut	520694
American Apollo	529004
American Leader	266256
American Ace	265143
American Argosy	266181
American Alliance	266832
American Challenger	289699
American Charger	290089
American Courier	290255
American Champion	290524
Pioneer Commander	290905
American Corsair	291629
American Chieftain	291020
Pioneer Contractor	291968
Pioneer Contender	292572
Pioneer Crusador	292930
Pioneer Moon	289263
American Racer	297001
American Ranger	298270
American Reliance	299371
S.S. United States	263934

Ships Under Construction/Conversion

Name	Contract Number	Shipyard	Scheduled Delivery
American Aquarius	MA/MSB 87	Sun Shipbuilding	1/15/71
American Accord	MA/MSB 81	Bethlehem Steel	12/15/70
American Legend	MA/MSB 85	Todd Shipyard	12/15/70
American Archer	MA/MSB 79	Alabama Drydock	11/14/70
American Legacy	MA/MSB 85	Todd Shipyard	1/30/71

UNITED STATES LINES, INC.
SCHEDULE OF OWNED VESSELS

EXHIBIT E

EXHIBIT F

The Time Charter shall be amended as follows:

The first paragraph of Section 1 of the Time Charter is hereby deleted and in lieu thereof the following shall be inserted:

"1. *Effective Date; Charter Period.* This Charter and the instruments listed in Schedule A-2 hereto (hereinafter called the 'Related Instruments') are all subject to the prior approval of the Federal Maritime Commission (hereinafter called the 'Commission') pursuant to Section 15 of the Shipping Act, 1916, as amended, and, with respect to the intercoastal water carrier facilities and services involved, are subject to the prior approval of the Interstate Commerce Commission pursuant to section 5 of the Interstate Commerce Act. The date on which the merger (hereinafter called the 'Merger') of RJI Corporation, a Delaware corporation (hereinafter called 'RJI'), and the Owner is consummated pursuant to the Agreement of Merger dated as of November 9, 1970 among R.J. Reynolds Tobacco Company, Walter Kidde & Company, Inc., RJI, the Owner and the Charterer, is hereinafter called the 'Effective Date'; provided, however, that if all required approvals of this Charter, the Agreement of Merger and the Merger by the Commission and the Interstate Commerce Commission, respectively, are not obtained or if any such approvals of the Federal Maritime Administration (or the Secretary of Commerce) as

may be required by law are not obtained, or if the Merger does not take place, or if at any time after the date of the Merger, the Owner ceases to be a wholly-owned subsidiary or affiliate of R.J. Reynolds Tobacco Company or it or such affiliate ceases to own the Vessels or any substantial number thereof, either party hereto may cancel this Charter by written notice delivered to the other party."

CERTIFICATE OF SECRETARY
Of
RJI CORPORATION

The undersigned Secretary of RJI CORPORATION, a corporation organized and existing under the laws of the State of Delaware ("RJI") does hereby certify, as such Secretary and under the seal of RJI, that the Agreement of Merger to which the Certificate is attached after having been first duly entered into on behalf of RJI (pursuant to the provisions of Section 251 of the General Corporation Law of the State of Delaware) and under its corporate seal, and on behalf of United States Lines, Inc., a corporation organized and existing under the laws of the State of Delaware and under its corporate seal, was duly consented to in writing by the sole stockholder of RJI by an instrument dated , 1970, in accordance with the provisions of Section 228 of the General Corporation Law of Delaware applicable thereto; and that thereby said Agreement of Merger was duly adopted as the act of the sole

stockholder of RJI and as the duly adopted agreement of RJI.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of RJI Corporation (a Delaware corporation), this day of , 1970.

Secretary

(Corporate Seal)

CERTIFICATE OF THE SECRETARY OF UNITED STATES LINES, INC.

The undersigned, Secretary of UNITED STATES LINES, INC., a corporation organized and existing under the laws of the State of Delaware ("U.S. Lines"), does hereby certify, as such secretary and under the seal of U.S. Lines, that the Agreement of Merger to which this certificate is attached, after having been first duly entered into on behalf of U.S. Lines (pursuant to the provisions of Section 251 of the General Corporation Law of the State of Delaware) and under the corporate seal and on behalf of the RJI Corporation, a corporation of the State of Delaware and under its corporate seal has been duly consented to in writing by the sole stockholder of U.S. Lines by an instrument dated , 1970, in accordance with the provisions of Section 228 of the General Corporation Law of Delaware applicable thereto; and that said Agreement of Merger was duly adopted as the act of the sole stockholder of said U.S. Lines and the duly adopted agreement of U.S. Lines.

WITNESS my hand and the seal of said United States Lines, Inc. on this day of , 1970.

Secretary

CERTIFICATE OF EXECUTION

THE ATTACHED PLAN AND AGREEMENT OF MERGER, having been executed on behalf of each corporate party thereto, and having been adopted separately by each corporate party thereto, in accordance with the provisions of the General Corporation Law of the State of Delaware the President or Vice President of each corporate party thereto does now hereby execute the said Agreement of Merger and the Secretary or Assistant Secretary of each corporate party thereto does now hereby attest the said Agreement of Merger under the corporate seals of their respective corporations, by authority of the directors and stockholders thereof, as the

respective act, deed and agreement of each of said corporations, on this day of .

RJI CORPORATION

By
President

Attest:

Secretary

UNITED STATES LINES, INC.

By
President

Attest:

Secretary

Section 15 of the Shipping Act, 1916, 46 USC §814

Every common carrier by water, or other person subject to this chapter, shall file immediately with the Commission a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to this chapter, or modification or cancellation thereof, to which it may be a party or conform in whole or in part, fixing or regulating transportation rates or fares; giving or receiving special rates, accommodations, or other special privileges or advantages; controlling, regulating, preventing, or destroying competition; pooling or apportioning earnings, losses, or traffic; allotting ports or restricting or otherwise regulating the number and character of sailings between ports; limiting or regulating in any way the volume or character of freight or passenger traffic to be carried; or in any manner providing for an exclusive, preferential, or cooperative working arrangement. The term "agreement" in this section includes understandings, conferences, and other arrangements.

The Commission shall by order, after notice and hearing, disapprove, cancel or modify any agreement, or any modification or cancellation thereof, whether or not previously approved by it, that it finds to be unjustly discriminatory or unfair as between carriers, shippers, exporters, importers, or ports, or between exporters from the United States and their foreign competitors, or to operate to the detriment of the commerce of the United States, or to be contrary to the public interest, or to be in violation of this chapter, and shall approve all other agreements, modifications or cancellations. No such agreement shall be approved, nor shall continued approval be permitted for any agreement (1) between carriers not members of the same conference or conferences of carriers serving different trades that would otherwise be naturally competitive, unless in the case of agreements between carriers, each carrier, or in the case of agreements between conferences, each conference, retains the right of independent action, or (2) in respect to any conference agreement, which fails to provide reasonable and equal terms and conditions for admission and readmission to conference membership of other qualified carriers in the trade, or fails to provide that any member may withdraw from membership upon reasonable notice without penalty for such withdrawal.

The Commission shall disapprove any such agreement, after notice and hearing, on a finding of inadequate policing of the obligations under it, or of failure or refusal to adopt and maintain reasonable procedures for promptly and fairly hearing and considering shippers' requests and complaints.

Any agreement and any modification or cancellation of any agreement not approved, or disapproved, by the Commission shall be unlawful, and agreements, modifications, and cancellations shall be lawful only when and as long as approved by the Commission; before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement, modification, or cancellation; except that tariff rates, fares, and charges, and classifications, rules, and regulations explanatory thereof (including changes in special rates and charges covered by section 813a of this title which do not involve a change in the spread between such rates and charges and the rates and charges applicable to noncontract shippers) agreed upon by approved conferences, and changes and amendments thereto, if otherwise in accordance with law, shall be permitted to take effect without prior approval upon compliance with the publication and filing requirements of section 817(b) of this title and with the provisions of any regulations the Commission may adopt.

Every agreement, modification, or cancellation lawful under this section, or permitted under section 813a of this title, shall be excepted from the provisions of sections 1–11 and 15 of Title 15, and amendments and Acts supplementary thereto.

Whoever violates any provision of this section or of section 813a of this title shall be subject to a civil penalty of not more than $1,000 for each day such violation continues: *Provided, however,* That the penalty provisions of this section shall not apply to leases, licenses, assignments, or other agreements of similar character for the use of terminal property or facilities which were entered into before the date of enactment of this Act, and, if continued in effect beyond said date, submitted to the Federal Maritime Commission for approval prior to or within ninety days after the enactment of this Act, unless such leases, licenses, assignments, or other agreements for the use of terminal facilities are disapproved, modified, or canceled by the Commission and are continued in operation without regard to the Commission's action thereon. The Commission shall promptly approve, disapprove, cancel, or modify each such agreement in accordance with the provisions of this section.